Supreme Court, U. S.
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Volume I
APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-848

THOMAS U. GREER, Commander,
Fort Dix Military Reservation,
JAMES R. SCHLESINGER, Secretary of Defense,
Petitioners,

—v.—

BENJAMIN SPOCK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED JANUARY 16, 1975
CERTIORARI GRANTED APRIL 14, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1974

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INDEX TO APPENDIX

Volume I

	Page
In the United States District Court for the District of New Jersey:	
Docket Entries	1
Complaint with Exhibits A to F	4
Affidavit of Vincent I. Olsen	24
Affidavit of Harry W. French	27
Affidavits of D. G. Beattie	29
Transcript of Hearing on Preliminary Injunction	35
Witnesses	
Jasper R. Johnson:	
Direct	41

In the United States District Court for the District of New Jersey:

Jasper R. Johnson—Continued — Page

Cross 61
Redirect 63
Recross 65

Vincent I. Olsen:
Direct 66
Cross 77
Redirect 84

Dinah H. Portnoy:
Direct 85

Robert Stanton:
Direct 87
Cross 89

John H. Ginaven:
Direct 89
Cross 91
Redirect 91

Sidney R. Stapleton:
Direct 92
Cross 96

Fred W. Halstead:
Direct 97

Donald A. Campbell:
Direct 100
Cross 104

District Court Order Denying Preliminary Injunction 127
Court of Appeals Judgment dated October 27, 1972 128
Answer with Exhibit A 130
Defendants' Interrogatories 139
Plaintiffs' Response to Interrogatories 141
Defendants' Motion to Dismiss 143

In the United States District Court for the District of New Jersey—Continued — Page

Transcript of Trial 145

Witnesses

John H. Ginaven:
Direct 147
Cross 151
Redirect 155

John Landau:
Direct 156, 164
Voir Dire 161, 166
Cross 167

Larry Seigle:
Direct 171
Cross 174
Redirect 176

Alan E. Hardy:
Direct 176
Cross 178

Vincent I. Olsen:
Direct 180
Cross 183
Redirect 184
Recross 185

Donald G. Beattie:
Direct 186

Jasper Williams:
Direct 187
Cross 190

Richard O. Janes:
Direct 191
Cross 195

Louis J. Greco:
Direct 197
Cross 200

In the United States Supreme Court (No. 74-848):
Order Granting Petition for a Writ of Certiorari (April 14, 1975) 210

Page

Volume II—Exhibits

Plaintiffs' Exhibit 2A—Photograph of Ginaven and Misch Distributing Pamphlets E-1

Plaintiffs' Exhibit 7—*Army Times*, p. 15 (October 11, 1972).. E-3

Plaintiffs' Exhibit 7A—Photograph of Entrance to Fort Dix on New Jersey Route 68 ..... E-4

Defendants' Exhibit 3A—Cost Computation of Spock Campaign Visit E-5

Defendants' Exhibit 4A—Exchange Service Bulletin E-6

Defendants' Exhibit 19A—Department of Defense Directive 1325.6 ..... E-7

Defendants' Exhibit 19A—Department of Defense Directive 1344.10 ..... E-12

Defendants' Exhibit 19A—Department of Defense Directive 5410.18 ..... E-30

Defendants' Exhibit 20A—Department of Army Guidance on Dissent E-50

Defendants' Exhibit 21A—Army Regulation 210-10, Paragraph 5-5 ..... E-57

Defendants' Exhibit 22A—Department of Army Message..... E-60

Defendants' Exhibit 24A—Army Regulation 600-20, Section III and Appendix A E-61

Defendants' Exhibit 25A—Army Regulation 360-61, Chapter 2 ..... E-68

Defendants' Exhibit 26A—Army Regulation 670-5, Paragraphs 1-1 and 1-2 ..... E-72

Defendants' Exhibit 33A—Fort Dix Regulation 210-26 ..... E-75

Defendants' Exhibit 34A—Fort Dix Regulation 210-27 ..... E-77

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
Civil Action 1621-72

DOCKET ENTRIES

Date	Filings—Proceedings
9-29-72	Complaint filed.
9-29-72	Motion for Preliminary Injunction, Expedited Hearing, and Order to Show Cause (with appendices) filed. To be returned 10/6/72.
9-29-72	Summons issued.
9-29-72	Notice of Allocation and Assignment filed.—Trenton —Fisher
10-5-72	Notice of motion of Defendants for severance of plaintiffs, returnable 10-6-72 (Newark), filed 10-4-72.
10-5-72	Affidavit of Harry W. French filed 10-4-72.
10-5-72	Affidavit of Vincent J. Olsen filed 10-4-72.
10-5-72	Affidavit of D. G. Beattle filed 10-4-72.
10-5-72	Affidavit of D. G. Beattle filed 10-4-72.
10-5-72	Affidavit of Mailing of Motion for severance of plaintiffs and affidavits filed 10-4-72.
10-10-72	Transcript of Hearing on order to show cause re preliminary injunction held on 10-6-72 filed.
10-11-72	Hearing on plaintiffs' application for preliminary injunction. DECISION RESERVED. Hearing on defendants' motion for severance of plaintiffs. DECISION RESERVED. (Fisher) (10-6-72) (Newark)
10-13-72	Opinion denying application for preliminary injunction. (Fisher) filed 10-12-72
10-13-72	Order denying application for preliminary injunction filed. (Fisher) Notice mailed.

10-13-72 Copy of opinion mailed to Atty. General of the U.S.

10-16-72 Notice of appeal filed 10-13-72. (Copies mailed to Clerk, U.S.C.A. and U.S. Attorney)

10-17-72 Record on Appeal mailed to Judge Gibbons as per instruction of U.S.C.A. (Notice furnished to counsel)

10-27-72 Summons returned served on 10-11-72 on Bert David; on Melvin Laird, U.S. Attorney, & Attorney General of U.S. on 10-3-72 filed.

11-1-72 Opinion of U.S.C.A. filed.

11-1-72 Certified copy of Judgment of U.S.C.A. in lieu of mandate reversing order of this court filed 10-12-72 & remanding for entry of preliminary injunction filed.

11-1-72 Order for preliminary injunction filed 10-31-72. (Fisher) (Notice Mailed)

11-2-72 Order re minimal terms concerning a campaign address by the candidate plaintiffs at the Fort Dix military reservation filed 11-1-72. (Fisher) (Notice Mailed)

12-4-72 Answer and affidavit of mailing filed.

12-8-72 Interrogatories of defendants to plaintiffs filed.

1-3-73 Plaintiffs' response to interrogatories of the defendant filed.

1-11-73 Notice of motion of defendants, to dismiss the complaint, returnable 1-29-73, and affidavit of mailing filed 1-10-73.

1-30-73 Trial moved before Hon. Clarkson S. Fisher without Jury at 10:00 a.m. Hearing on defendants' motion to dismiss the complaint. DECISION RESERVED. (Fisher) (1-29-73)

2-23-73 Transcript of proceedings held 1-29-73 filed.

3-13-73 Letter amending transcript filed 3-12-73.

6-13-73 Memorandum filed. (Fisher)

6-25-73 Final judgment for permanent Injunction and dismissing complaint as to plaintiffs, Jenness and Pulley without costs filed 6-22-73, (Fisher) (Notice Mailed)

8-22-73 Notice of appeal filed 8-21-73. (Copies Mailed to Clerk, U.S.C.A. and Carl Poplar, Esq.)

9-12-73 Motion of defendants for extension of time for transmission of the record to 10-23-73 filed.

9-17-73 Order extending time to transmit record to 10-23-73, and time for docketing appeal to 10-29-73 filed. (Fisher) (Notice Mailed)

10-24-73 Order extending time to transmit record to 11-14-73 and time for docketing appeal to 11-19-73 filed 10-23-73. (Fisher) (Notice Mailed)

11-14-73 Record on Appeal mailed to Clerk, USCA (Notice furnished to counsel)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1621-72

(Filed September 29, 1972)

Jury Trial Waived

BENJAMIN SPOCK; JULIUS HOBSON; LINDA JENNESS; ANDREW PULLEY; SOCIALIST WORKERS PARTY; JOHN GINAVEN; DONALD MISCH; ALAN HARDY; ROBERT STANTON, PLAINTIFFS

v.

BERT A. DAVID, Commander, Fort Dix Military Reservation, MELVIN LAIRD, Secretary of Defense, DEFENDANTS

COMPLAINT

Plaintiffs, by their undersigned counsel, respectfully allege the following:

Jurisdiction

1. This case arises under the Constitution of the United States, in particular the First and Fifth Amendments, and under 5 U.S.C. §§ 701 *et seq.*; 28 U.S.C. §§ 1331, 1343, and 1361; and 42 U.S.C. § 1972. Jurisdiction is conferred by 5 U.S.C. §§ 701 *et seq.*; 28 U.S.C. §§ 1331, 1343, and 1361; and the First and Fifth Amendments to the Constitution of the United States.

2. The matter in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

Parties

3. Plaintiff BENJAMIN SPOCK is a resident of New York and the Presidential candidate of The People's Party in the 1972 election.

4. Plaintiff JULIUS HOBSON is a resident of Washington, D.C. and the Vice-Presidential candidate of The People's Party in the 1972 election.

5. Plaintiff LINDA JENNESS is a resident of New York and the Presidential candidate of the Socialist Workers Party in the 1972 election.

6. Plaintiff ANDREW PULLEY is a resident of New York and the Vice-Presidential candidate of the Socialist Workers Party in the 1972 election.

7. Plaintiff SOCIALIST WORKERS PARTY is a national political party which has nominated and run candidates in presidential elections for over twenty years. The Party primarily directs its presidential campaign at specific segments of American society whose political rights and interests, in the Party's view, have been ignored or misrepresented by the major parties and their candidates.

8. Plaintiffs JOHN GINAVEN and DONALD MISCH are residents of Philadelphia, Pennsylvania and staff members of CCCO—An Agency for Military and Draft Counseling. CCCO is a non-profit organization, established in 1948 as the Central Committee for Conscientious Objectors, which publishes and distributes material on military and draft law, trains military and draft counselors, and seeks to spread knowledge of the rights of servicemen and -women.

9. Plaintiff ALAN HARDY is a resident of Philadelphia, Pennsylvania and a staff member of Philadelphia Resistance, a group that actively opposes American involvement in the war concerning the war and their rights.

10. Plaintiff ROBERT STANTON is a resident of Philadelphia, Pennsylvania and was at the time relevant to this Complaint a staff member of the Student Mobilization Committee, a group opposed to American involvement in the war in Indochina.

11. The named Defendants are sued for actions they have taken and threaten to take under color of their official, federal authority and in violation of the Constitution and laws of the United States:

(a) Defendant BERT A. DAVID is Commanding Officer of Fort Dix Military Reservation, New Jersey (hereinafter "the Base").

(b) Defendant MELVIN LAIRD is Secretary of Defense of the United States and resides officially in Washington, D.C.

Cause of Action

12. The Base covers 31,993 acres in Burlington County, New Jersey. It is an open base; there are no gates or hindrances to access. The many entrances and exits include public highways that are major public thoroughfares and are frequently used by civilians traveling through and within New Jersey as well as military personnel and civilians employed on the Base. Many military personnel and civilian employees reside with their dependents on the Base.

13. On September 9, 1972, Plaintiffs SPOCK, HOBSON, JENNESS, and PULLEY wrote a joint letter to Defendant DAVID notifying him of their intent to enter the Base at about 10:30 A.M. on September 23, 1972 for the purpose of distributing campaign literature and holding a meeting to discuss election issues with service personnel and their dependents (a copy of this letter is attached hereto as Exhibit A and incorporated herein). In their letter, Plaintiffs stressed their willingness to confine their campaign to such times and places as might be designated by Defendants. They also pointed out that the Supreme Court of the United States and the United States District Court for the District of Rhode Island had recently upheld the rights of civilians to exercise their First Amendment rights on military bases and that they were particularly interested in campaigning at Fort Dix because it had been recently ruled that service personnel stationed in New Jersey can vote there.

14. By letter dated September 18, 1972 (copy attached hereto as Exhibit B and incorporated herein), Defendant DAVID responded that Plaintiffs SPOCK, HOBSON, JENNESS, and PULLEY "will not be permitted to campaign at Fort Dix." He gave five reasons for prohibiting the exercise of First Amendment rights by Presidential and Vice-Presidential candidates: (a) Fort Dix Regulation No. 210-26, promulgated on April 9, 1968, prohibits all "demonstrations, picketing, sit-ins,

protest marches, political speeches and similar activities" on the Base (a copy of this regulation is attached hereto as Exhibit C); (b) Fort Dix Regulation No. 210-27 prohibits distribution of literature that has not been approved as to content; (c) Department of the Army regulations prohibit military personnel from participating in any partisan political campaign; (d) military personnel do not have time and campaigning would interfere with their duties; and (e) if he were to allow them to campaign, it would appear that he was supporting their candidacies in his official capacity.

15. On September 21, 1972, Plaintiffs SPOCK and PULLEY, through their counsel, informed Defendants that they intended to walk onto the Base for the purpose of campaigning at 11:00 A.M. on September 23, 1972 through the usually open entrance on Fort Dix St. just outside of Wrightstown, New Jersey. They indicated that they wished to speak to Defendant DAVID concerning his decision to prohibit their entrance.

16. On September 23, 1972, Plaintiffs SPOCK and PULLEY approached the Base entrance on Fort Dix Street at about 11:00 A.M. They were met by Col. James Simon, who indicated he was there on behalf of defendant DAVID. Plaintiffs SPOCK and PULLEY repeated their intent to peacefully campaign on the Base at a time and place designated by Defendants. Concerning Defendant DAVID's letter of September 18, 1972, they stated that: recent federal court decisions clearly indicated that Fort Dix Regulations Nos. 210-27 and 210-26 violate the First and Fifth Amendments to the Constitution of the United States and that civilians have a constitutional right to exercise their First Amendment rights on an open military base; military personnel are certainly not participating in a partisan campaign by listening to a campaign speech or reading campaign literature, which they are allowed to do on the Base by means of the mass media, if not in person, concerning the candidates of the major parties; military personnel do have time to listen without interfering with their duties; since it was Saturday, almost half of them had no assigned duties; the Depart-

ment of Defense has issued regulations urging military personnel to vote intelligently; Base officials could in no way be seen as supporting their candidacy by merely allowing them to campaign; and Base officials were allowing military personnel to be exposed to campaigning by the candidates of the major parties by means of television, radio, and newspaper reports. Colonel Simon refused to admit them to the Base and prohibited their entrance.

17. Defendants' policy and its implementation virtually destroys the ability of Plaintiffs SPOCK, HOBSON, JENNESS, and PULLEY to carry their ideas and election campaigns to service personnel and their dependents.

18. Because they are minority candidates with limited financial resources that prevent their access to the mass media, and because their political philosophy is that they must establish their honesty and credibility in face-to-face meetings with voters, it is essential to their campaigns and their ability to compete with the major parties that plaintiffs have access to the Base and other bases having suitable public facilities and large working and residential populations of service personnel and dependents.

19. On or about August 17, 1972, Plaintiffs JOHN GINAVEN and DONALD MISCH were peacefully distributing a booklet concerning the rights of soldiers within the boundaries of the Base (on the sidewalk of the public highway running from Wrightstown to Pemberton, New Jersey). They were taken into custody by agents and employees of the Defendants, released, and issued a notice prohibiting them from entering the Base (copy attached hereto as Exhibit D and incorporated herein).

20. In mid-February, 1972, Plaintiff ALAN HARDY was on the Base peacefully distributing leaflets that announced an upcoming demonstration at McGuire Air Force Base to protest the government's unprecedented use of airpower and anti-personnel bombs against the peoples of Indochina. He was taken into custody for several hours by agents and employees of Defendants, released, and issued a notice prohibiting him from entering the Base (copy attached hereto as Exhibit E and incorporated herein).

21. On or about December 5, 1968, Plaintiff ROBERT STANTON was distributing anti-war leaflets to soldiers at a barracks on the Base. He was taken into custody for a few hours by agents and employees of Defendants, released, and issued a notice prohibiting him from entering the Base (copy attached hereto as Exhibit F and incorporated herein).

22. The implementation of Defendants' policy and regulations to deny Plaintiffs access to the Base violates the First and Fifth Amendments in that:

(a) It deprives Plaintiffs SPOCK, HOBSON, JENNESS, PULLEY and SOCIALIST WORKERS PARTY, as minority political parties and candidates, of their only feasible means of communicating their views and of carrying their campaigns to the service personnel and dependents on the Base. It also deprives the other Plaintiffs of their only feasible means of communicating their views on the election to service personnel and dependents on the Base.

(b) It prevents Plaintiffs from disseminating their ideas among Base personnel while dissemination of other ideas is allowed, thereby discriminating against Plaintiffs' speech, leaflets, and demonstrations because of their content.

(c) It constitutes an unconstitutional violation of Plaintiffs' rights of freedom of speech, association, and assembly.

(d) It constitutes arbitrary censorship of ideas proffered to Base personnel, thereby abridging their right to receive information, and their right to knowingly and effectively exercise their franchise.

23. Defendants' policy and Fort Dix Regulations Nos. 210-26 and 210-27, on their faces, violate the First Amendment in that they constitute a vague and overbroad proscription on speech, assembly, and association.

24. Defendants' blanket prohibition on Plaintiffs' access to the Base has caused and will continue to cause grave and irreparable injury to Plaintiffs' right to free-

dom of speech, association and assembly and to an equal and effective opportunity to communicate their views on the critical election issues to the voters.

25. Unless this Court grants the relief requested herein, Plaintiffs will continue to suffer the grave and irreparable injury described above.

26. Plaintiffs have made no prior application in this or any other court for the relief now requested.

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Declare Defendants' policy and Fort Dix Regulations Nos. 210-26 and 210-27, and their application by Defendants, void and in violation of the First and Fifth Amendments to the Constitution of the United States;

(b) Direct Defendants, their agents and employees to admit Plaintiffs to the Base for the purpose of exercising their First Amendment rights both before and after the 1972 election;

(c) Enjoin Defendants and their agents and employees from interfering in any way with Plaintiffs' exercise of their First Amendment rights on the Base both before and after the 1972 election; and

(d) Grant such other and further relief as may be appropriate.

/s/ David Kairys
DAVID KAIRYS

/s/ David Rudovsky
DAVID RUDOVSKY
Philadelphia counsel for the
NATIONAL EMERGENCY CIVIL LIBERTIES COMMITTEE
1427 Walnut Street
Philadelphia, Pa. 19102

Of Counsel:

KAIRYS & RUDOVSKY
1427 Walnut St.
Philadelphia, Pa. 19102

Local Counsel:

/s/ Carl Poplar
CARL POPLAR, ESQ.
702 Wilson Building
130 North Broadway
Camden, New Jersey 08102

Attorneys for Plaintiffs

Dated: September 29, 1972

EXHIBIT A

LETTER DATED SEPTEMBER 9, 1972 TO GENERAL BERT DAVID FROM SPOCK, HOBSON, JENNESS & PULLEY

September 9, 1972

General Bert David
Commanding Officer
Fort Dix, New Jersey

Dear General David:

As presidential and vice-presidential candidates, we intend to visit Fort Dix to campaign among the servicemen and servicewomen there. Both the Peoples Party and the Socialist Workers Party are addressing themselves to the special issues facing U.S. soldiers. For this reason we are bringing our respective campaigns wherever possible directly to the American G.I.

The recent decision allowing G.I.'s stationed in New Jersey to register and vote there will undoubtedly result in an increased number of registered voters at the base, and an increased interest in the presidential contest. For that reason we are especially looking forward to campaigning at Fort Dix.

As you know, the courts have recently upheld the rights of citizens to exercise their first amendment rights on military bases, in *Flower* v. *United States* (June 12, 1972) and *Jenness* v. *Frame* (August 10, 1972).

It is not our intention to disrupt the normal functioning of the base and we will of course abide by any reasonable restrictions as to the time and places of our campaigning. Perhaps you would like to furnish us with a meeting hall or other such facility while we are on the post, where we might address interested soldiers. We will want to distribute our literature and talk to the soldiers about the issues that concern them.

Our visit will take place on September 23, from about 10:30 A.M. to 2:00 P.M. If you have any questions concerning our plans, please contact us through our campaign offices.

The Socialist Workers Party Campaign Committee is located at 706 Broadway, 8th floor, New York, NY 10003, (212) 982-7676. The Peoples Party has its offices at 1404 M Street NW, Washington, DC 20005, (202) 785-1535.

Sincerely,

/s/ Benjamin Spock
BENJAMIN SPOCK
Peoples Party presidential candidate

/s/ Julius Hobson
JULIUS HOBSON
Peoples Party vice-presidential candidate

/s/ Linda Jenness
LINDA JENNESS
Socialist Workers Party presidential candidate

/s/ Andrew Pulley
ANDREW PULLEY
Socialist Workers Party vice-presidential candidate

EXHIBIT B

LETTER DATED SEPTEMBER 18, 1972 TO LINDA JENNESS FROM BERT A. DAVID

[SEAL]

AHBDCG

DEPARTMENT OF THE ARMY

Headquarters US Army Training Center, Infantry,
and Fort Dix
Fort Dix, New Jersey 08640

Sep 18, 1972

Linda Jenness
c/o Socialist Workers Party
706 Broadway, 8th Floor
New York, New York 10003

Dear Ms. Jenness:

This responds to your letter of September 9, 1972, received at 4:36 P.M., September 13, 1972.

Your request to visit Fort Dix and campaign among our servicemen and women is denied.

There are several compelling reasons for this denial which I shall enumerate. First, there are lawful regulations in effect which prohibit political speeches and similar activities on all of the Fort Dix Military Reservation (Fort Dix Regulation 210-26). The distribution of literature without prior approval of this headquarters is also prohibited (Fort Dix Regulation 210-27). Also, Department of the Army Regulations prohibit military personnel from participating in any partisan political campaign and further prohibits them from appearing at public demonstrations in uniform.

The mission assigned to me as Commanding General of Fort Dix is to administer basic combat training to approximately 15,000 men at any given time. These men

spend a period of eight weeks here during which they perform their training on very vigorous schedules occupying virtually all of their time. I am not in a position to dilute the quality of this training by expanding these schedules to include time to attend political campaigning and speeches. Political campaigning on Fort Dix cannot help but interfere with our training and other military missions.

To decide otherwise could also give the appearance that you or your campaign is supported by me in my official capacity. I feel that I am prohibited from doing this for any candidate for public office.

For the foregoing reasons, you will not be permitted to campaign at Fort Dix.

You are further advised that any person entering Fort Dix for purposes prohibited by the regulations mentioned above violates Title 13, U.S.C., Section 1382, which provides, in part, that ". . . whoever . . . goes upon any military reservation . . . for any purpose prohibited by law or lawful regulation . . . shall be fined not more than $500.00 or imprisoned not more than six months, or both."

Sincerely,

/s/ Bert A. David
BERT A. DAVID
Major General, USA
Commanding

CF: Andrew Pulley

EXHIBIT C

DEPARTMENT OF THE ARMY

Headquarters US Army Training Center, Infantry
Fort Dix, New Jersey 08640

REGULATION NUMBER 210-26 — 9 April 1968

INSTALLATIONS

DEMONSTRATIONS

1. *PURPOSE*:

This regulation establishes policy concerning demonstrations, pickets, protest marches and similar activities on the Fort Dix Military Reservation.

2. *PROHIBITED PRACTICES*:

a. Demonstrations, picketing, sit-ins, protest marches, political speeches and similar activities are prohibited and will not be conducted on the Fort Dix Military Reservation.

b. No one shall enter on this installation for any of the purposes prohibited by this regulation and such entry will constitute a violation of Title 18, United States Code, Section 1382, which provides in part that . . . "whoever, within the jurisdiction of the United States, goes upon any military . . . reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation . . . shall be fined not more than $500.00 or imprisoned not more than six months, or both."

3. *RESPONSIBILITIES*:

Any individual having knowledge of a violation of this regulation will contact the Provost Marshal as expeditiously as possible.

FOR THE COMMANDER (AHBOGA)

OFFICIAL:

DAVID A. GILE
Colonel, GS
Chief of Staff

/s/ R. St. Pierre
R. ST. PIERRE
LTC, AGC
Asst AG

This regulation supersedes Regulation 210-26(0), this headquarters, 20 September 1967, subject: Demonstrations.

EXHIBIT D

[SEAL]

AHBOCG

DEPARTMENT OF THE ARMY

Headquarters US Army Training Center, Infantry,
and Fort Dix
Fort Dix, New Jersey 08640

17 Aug 72

SUBJECT: Formal Order of Ejection

GINAVEN, John H.
SSAN: 279-38-0327
West Chester, Pa.

1. The officer of the US Army who has delivered this letter to you has been designated by me to order you ejected from the Fort Dix Military Reservation and barred from reentry because of conduct detrimental to the performance of the military mission at this installation.

2. Subsequent entry upon the Fort Dix Military Reservation may constitute a violation of Title 18, United States Code § 1382, and subject you to a fine of not more than $500.00 or imprisonment not to exceed six months, or both.

/s/ Bert A. David
BERT A. DAVID
Major General, USA
Commanding

/s/ Jeremiah P. Morrison
1LT JEREMIAH P. MORRISON
MPC, PMD, FDNJ

DISTRIBUTION:

Individual concerned
Provost Marshal
G2
Chief, Security Police, McGuire AFB
Civilian Personnel Office
Det D, 12 MP Gp (CI)
Local FBI

CHARGES: ILLEGAL SOLICITATION

FDPM FL 3, Dec 69

EXHIBIT E

DEPARTMENT OF THE ARMY

Headquarters US Army Training Center, Infantry,
and Fort Dix
Fort Dix, New Jersey 08640

[SEAL]

AHBOCG

SUBJECT: Formal Order of Ejection

Alan E. Hardy
SSAN #120-32-9855
#3605 Hamilton St., 3rd Floor
Philadelphia, Pa. 19104

1. The officer of the US Army who has delivered this letter to you has been designated by me to order you ejected from the Fort Dix Military Reservation and barred from reentry because of conduct detrimental to the performance of the military mission at this installation.

2. Subsequent entry upon the Fort Dix Military Reservation may constitute a violation of Title 18, United States Code § 1382, and subject you to a fine of not more than $500.00 or imprisonment not to exceed six months, or both.

/s/ Howard H. Cooksey
HOWARD H. COOKSEY
Major General, USA
Commanding

/s/ Stephen S. Kaminsky
Stephen S. Kaminsky
CPT MPC
Provost Marshal Duty Officer
Provost Marshal Division, FDNJ.

DISTRIBUTION:

Individual concerned
Provost Marshal
G2
Chief, Security Police, McGuire AFB
Civilian Personnel Office
Det D, 12th MP Gp (CI)
Local FBI

CHARGES: ILLEGAL DISTRIBUTION

FDPM FL 3, Dec 69

EXHIBIT F

DEPARTMENT OF THE ARMY

Headquarters US Army Training Center, Infantry,
and Fort Dix
Fort Dix, New Jersey 08640

[SEAL]

AHBOCG

5 Dec 68

SUBJECT: Formal Order of Ejection

NAME: Robert Edward Stanton

ADDRESS: 2211 N 52nd St
Philadelphia, Pa

TO: Robert Edward Stanton

1. The officer of the US Army who has delivered this letter to you has been designated by me to order you ejected from the Fort Dix Military Reservation and barred from re-entry because of conduct detrimental to the performance of the military mission at this installation.

2. Subsequent entry upon the Fort Dix Military Reservation may constitute a violation of Title 18, United States Code § 1382, and subject you to a fine of not more than $500.00 or imprisonment not to exceed six months, or both.

/s/ K. W. Collins
K. W. COLLINS
Major General, USA
Commanding

DISTRIBUTION:

Individual concerned
Provost Marshal
G2
Chief, Security Police, MAFB
Civilian Personnel
Det D, 12th MP Gp (CI)
Local FBI

This letter delivered 5 Dec 68 by Bartlett S Fleming 1LT, MPC

BARTLETT S FLEMING 1LT, MPC

FDPM: FL 3, Mar 68

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Filed October 4, 1972]
[Title Omitted in Printing]

AFFIDAVIT OF VINCENT I. OLSEN
COLONEL, UNITED STATES ARMY

Now comes the affiant, VINCENT I. OLSEN, Colonel, United States Army, and says:

I am a Colonel in the United States Army with a permanent duty station at Fort Dix, New Jersey.

Since 4 August 1971, I have been the Provost Marshal at Fort Dix and in that capacity have responsibility for the overall security of the post under the command of Major General Bert A. David at Fort Dix. The main purpose and function of the military police is the enforcement of discipline, law and order throughout the installation. Other duties include direct supervision over the Fort Dix Correctional Facility and coordination with civilian law agencies as to respective areas of responsibility.

Fort Dix covers an area of 55 square miles and has 7 main entrance ways. Post Headquarters office buildings, troop billets, housing areas and the main activity of the post is contained in a much smaller area.

At the present time the roads leading into Fort Dix are not closed in the sense that there are no guards or guard houses on any of the entrance ways. The main reason that this has not been deemed necessary up until the present time is the relative remoteness of Fort Dix from any large population centers. The areas surrounding Fort Dix are mainly rural farmlands and some small towns. We are 18 miles southeast of Trenton, New Jersey, and some 30 miles northeast of Philadelphia. Because of the general inaccessibility of Fort Dix and the expense of manning guards at the entrances of a large military installation, it has not, up until this time, appeared to be worthwhile to establish gate guards.

Fort Dix is a military reservation with exclusive federal jurisdiction. When the land was originally ceded to the Federal Government by the State of New Jersey, the only thing retained by the State of New Jersey was a right of way easement in certain county roads for the purpose of transportation. The only other jurisdiction retained by New Jersey was the right to serve civil process on the reservation. These roads are the Pemberton-Wrightstown Road, Access Highway #68, Saylors Pond Road, North Pemberton-Pointville Road, and the Browns Mill Road. These are reflected on the attached map of the post. These roads are used primarily by military and civilian personnel working on the military installation. The only sidewalks adjacent to these roads are mainly used by personnel who work at Fort Dix.

On a normal day at any given hour, there are five to eight patrols of two men each operating throughout the post. It is standard operating procedure for these military policemen on patrol to stop any suspicious personnel on post and inquire into the reason for his presence. If he is doing something improper or illegal, he will be escorted to the nearest gate. He will be issued a letter of ejection if he is in violation of an Army or post regulation or a federal statute. If it is a mere traffic or other minor offense, the violator will be cited by the military police to the Federal Magistrate court. If it is a serious crime, it will be referred to the United States Attorney's Office in Trenton. This is deemed essential for the maintenance of military security in keeping with the training function of the post.

On 17 August 1972, John Ginaven and Donald Misch were distributing a booklet on the parking lot adjacent to the Wrightstown-Pemberton Road. Fort Dix Regulation 210-27 prevents the distribution of literature on the post without prior approval of the Adjutant General. The above personnel had no such permission. They were escorted from the post and issued a letter of ejection advising them of the violation of Title 18, USC Section 1382, which provides in part that anyone entering a military reservation for any purpose prohibited by law or

lawful regulation shall be fined not more than $500.00 or imprisoned not more than six months, or both.

On 24 February 1972, Alan Hardy was seen placing anti-war demonstration posters on the windshields of cars in the parking lot of Timmerman Theater. This is in violation of FDR 210-27. This theater is geographically located in the middle of the post where most activities take place. Mr. Hardy was escorted off the post and issued a letter of ejection.

Our records at Fort Dix do not go back through 1968. However, the unauthorized entry into a barracks for the purpose of distribution is specifically prohibited by regulations. Para 3h, Fort Dix Regulation 210-6 precludes posters or other forms of advertising for distribution to any part of the installation. Subparagraph n of the same regulation states that "under no circumstances will interviews be conducted in company orderly rooms, barracks, dayrooms, mess halls, service clubs, and other training or troop assembly areas."

VINCENT I. OLSEN, Colonel, United States Army, being duly sworn according to law, deposes and says that the facts alleged in this affidavit are true to the best of his knowledge.

/s/ Vincent I. Olsen
VINCENT I. OLSEN

Sworn and Subscribed before me, a Notary Public, on this 3rd day of October 1972, at Fort Dix, New Jersey.

/s/ Stanley E. Kowaleski
STANLEY E. KOWALESKI
Notary Public of New Jersey
My Commission Expires Aug. 16, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Filed October 4, 1972]
[Title Omitted in Printing]

AFFIDAVIT OF HARRY W. FRENCH,
COLONEL, UNITED STATES ARMY

Now comes the affiant, HARRY W. FRENCH, Colonel, United States Army, and says:

I am a Colonel in the United States Army with permanent duty station at Fort Dix, New Jersey.

Since 26 July 1972, I have been assigned as the Directorate of Plans and Training for the United States Army Training Center, Infantry and Fort Dix, Fort Dix, New Jersey. My duties include overall responsibility for training and planning activities under the command of Major General Bert A. David at Fort Dix.

The primary mission of Fort Dix is to train a current, average, population of 12,000 recruits in an eight and a half week course of Basic Combat Training. This includes vigorous physical training programs designed to gain maximum physical conditioning well before the lapse of this eight week period.

There are currently two basic combat training and one Advanced Individual Training (CS) brigades at Fort Dix.

The training schedules call for a 5½ day training work week for certain battalions and a 5 day work week for other battalions. Personnel receive intensive physical and lecture training in subjects such as Marches and Bivouac, Bayonet Training, Geneva Conventions, Drill and Ceremony, Guard Duty, Map Reading, First Aid, Land Navigation Chemical, Biological and Radiological Warfare, Pugil Training, Land Mine Warfare, Weapons Firing, and individual tactical training. In addition to the actual training periods, substantial periods of time must also be devoted to physical examinations, immunization, inspections, orientations, testing and

ceremonies. Basic Combat Training is a highly condensed activity of physical training in which many trainees use all of their free time for rest and recuperation.

In addition to the basic training function outlined above, there are also several schools here devoted to advanced individual training. Examples of these are the Cooks School, Wiremens Course, Wheeled Vehicle Mechanics Course, Clerks Training, Chaplains Asssitants School, On the Job Military Police Training and Special Training Company.

On September 23, 1972, there were approximately 5,600 active duty personnel actively engaged in various aspects of basic combat training. In addition to these personnel, 4,743 reserve forces personnel were present at Fort Dix and Actively Engaged in training activities, for a total of 10,343 personnel. Approximately 1,000 permanent party personnel would have to be in an on duty status to support the training of these men.

Also located at Fort Dix in an active status are the United States Army Personnel Center, responsible for the world wide movement of military personnel; Walton Army Hospital; Personnel Control Facility. These activities are operated on a 24 hour day and seven day week.

All trainees assigned to Fort Dix are restricted to the post for four weeks. Basic training is a highly intensified period of activity for these men, the degree of which they had probably not previously experienced and will probably never experience again—in or out of the Army.

The vast majority of the geographical area of the Fort Dix Military Reservation is devoted to these training activities. A great deal of this area is off limits to all but authorized personnel in order to minimize interferences with the progress of training.

The training schedules and activities outlined by me are of the highest quality and are designed to produce military personnel of the highest quality. Further dilution of these schedules would serve only to reduce the effectiveness of the training, resulting in a soldier of lesser quality. There is no room for interference with this training. Training periods missed must be made up

by the trainee. Graduates of the Fort Dix training establishment usually go on to another duty station for advanced training and eventually to a permanent duty assignment. Their daily scheduling usually does not resemble an ordinary work week until they arrive at their first permanent duty station.

HARRY W. FRENCH, Colonel, United States Army, being duly sworn according to law, deposes and says that the facts alleged in this affidavit are true to the best of his knowledge, information, and belief.

/s/ Harry W. French
HARRY W. FRENCH

Sworn and Subscribed before me this 2d day of October, 1972.

/s/ Louis J. Greco
LOUIS J. GRECO
CPT, Judge Advocate General's Corps
Authorized to Administer Oaths
Pursuant to 10 USC 936

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Filed October 4, 1972]
[Title Omitted in Printing]

AFFIDAVIT OF D. G. BEATTLE
MAJOR, UNITED STATES ARMY

Now comes the affiant, D. G. BEATTLE, Major, United States Army, and says:

I am the official custodian of the documents attached hereto which is a true and correct copy of a portion of the military police blotter, dated 24 February 1972, at the Provost Marshal's Office, Fort Dix, New Jersey, which we have on official file.

/s/ D. G. Beattle
D. G. BEATTLE

Sworn and Subscribed before
me this 3rd day of October 1972.

/s/ Worth T. Haithcock
WORTH T. HAITHCOCK
CPT, JAGC
Authorized to Administer Oaths
Pursuant to 10 USC 936

Affidavit of D.C. Beattie

38a

MILITARY POLICE DESK BLOTTER
For use of this form, see AR 190-45; the proponent agency is Office of the Provost Marshal General.

DATE (From 0001 hours to 2400 hours) 24 FEBRUARY 1972

PAGE NO.

INSTALLATION DESIGNATION
PROVOST MARSHAL DIVISION, FORT DIX, NEW JERSEY

NO. OF PAGES 8

ENTRY NO.	TIME	SUMMARY OF COMPLAINT, INCIDENT, POLICE INFORMATION	SUMMARY OF ACTION TAKEN	ENTERED BY
13	2130	ILLEGAL DISTRIBUTION SUBJECT# 1 - CUNNINGHAM, Michael J., CIV, SSAN: Unk. Upper Darby, Pa. SUBJECT# 2 - HARDEY, Alan E., CIV, SSAN: Unk 3605 Hamilton St., Philadelphia, PA. COMPLAINANT- GRACIA, Angel L., 1st SGT, SSAN: 110 24 1101 Transfer Processing Co, FDNJ. WITNESS - PRINCE, Cecil F., 1st SGT, SSAN: 262 04 0649 D-3-2, FDNJ. TIME - 2115hrs. DATE - 24 FEB 72. LOCATION - Parking lot adj to Timmerman Theater, FDNJ. (Bldg#5241) SGT P ntfd this ofc by telephone that at the above time, date and location he and WITN observed SUBJ# 1 & 2 placing anti-war demonstration posters on the windshield of the (CONTINUED)	DA Form 19-32 (FD-0585-72) initiated; SUBJs given letters of Fjection and issued citations; CASE# A015045 & CASE# A015044. Action on SUBJs is pending. PMDO(KAMINSKI), PMI(NICKELS) ntfd. SUBJ'S were escorted to Pemberton Post Boundires by MP Patrol. FBI Trenton (BUNTZ) ntfd declined jurisdiction.	

DA FORM 19-32

FPO 5. GOVERNMENT PRINTING OFFICE: 1969 O-356-359

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38

Affidavit of D.G. Beattie — 29a —

MILITARY POLICE DESK BLOTTER
For use of this form, see AR 190-45; the proponent agency is Office of the Provost Marshal General.

DATE (From 0001 hours to 2400 hours) 24 FEBRUARY 1972

UNIT OR STATION DESIGNATION: PROVOST MILITARY DIVISION, FORT DIX, NEW JERSEY

PAGE NO. 3

NO. OF PAGES 5

ENTRY NO	TIME	SUMMARY OF COMPLAINT, INCIDENT, POLICE INFORMATION	SUMMARY OF ACTION TAKEN	ENTERED BY
13	Cont'd	parked vehicles. CAR# 1,(CUNNINGHAM) disp, apprehended SUBJ# 1 & 2, advised them of their rights under 5th Amendment and transported SUBJs to PMD, FDNJ. Item nr# 13 is the last blotter entry for my tour of duty ending at 2230hrs, this date.	A.L. Rodriguez SSG A.L. RODRIGUEZ, D/SGT	
14	2300	Ref DE#13, this date, ILLEGAL DISTRIBUTION SUBJECT#1: CUNNINGHAM, Micheal J., Civ SSAN# 185-30-9315 126 N. Pennock Ave. Upper Darby, PA. SUBJECT#2: HARDY, Alan E., Civ SSAN# 120-32-9855 3605 Powelton Ave. 3rd Floor Philadelphia, PA. Further investigation revealed that the (2) SUBJ'S had given erroneous information about their SSAN numbers and address's. SUBJ'S later revealed thier correct SSAN numbers & address's to the Duty Officer, Cpt Kaminsky, PMDO.	INFO OPNS	ROSTER

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Filed October 4, 1972]
[Title Omitted in Printing]

AFFIDAVIT OF D. G. BEATTLE
MAJOR, UNITED STATES ARMY

Now comes the affiant, D. G. BEATTLE, Major, United States Army, and says:

I am the official custodian of the document attached hereto which is a true and correct copy of a portion of the military police blotter, dated 17 August 1972, at the Provost Marshal's Office, Fort Dix, New Jersey, which we have on official file.

/s/ D. G. Beattle
D. G. BEATTLE

Sworn and Subscribed before
me this 3rd day of October, 1972

/s/ Worth T. Haithcock
WORTH T. HAITHCOCK
CPT, Judge Advocate General's Corps
Authorized to Administer Oaths
Pursuant to 10 USC 936

~~Affidavit of D.G. Beattie~~ 31a

MILITARY POLICE DESK BLOTTER
(AR 190-45)

DATE (Hours in GMT): 17 AUG 72

ENTRY NO.	TIME	INCIDENT OR ACTION, PLACE, UNIT AND PERSONS INVOLVED	SUMMARY OF ACTION TAKEN	ENTERED BY
14	1710	ILLEGAL SOLICITATION:	DA Form 19-32 (FD-2432-72)initated.SUBJs rel to own custody off post.	STEWART
		SUBJECT #1 [illegible], Donald A. CIV SSAN: 3[illegible]-40-0388 443 Chestnut St. Phil PA		
		SUBJECT #2 GILLAWEN, John H. CIV SSAN: 279-38-0327 1909 Medford Rd, Wynnewood PA.		
		WITNESS #1 [illegible], Jon (IMI) CIV SSAN: 146-36-1270 161 Harvey St Phila Pa		
		WITNESS #2 [illegible], Thomas J.CIV SSAN: 105-38-7828 West Chester PA.		
		PRIOR RECORD: None on files in this ofc		
		TIME: 1700 hours		
		DATE: 17 AUG 72		
		LOCATION: Wrightstown Parking lot FDIJ		
		CAP #11(KRAVE) ntfd this ofc in person with SUBJ #102 in custody stating that at above time and location he observed SUBJs soliciting [illegible] CITIZENS on public for discharge purposes. CAP #11 apprehended SUBJs,advised them of rights under Uch I and transported to FDIJ, SUBJs were formal Notified of ofcs action.		

DA FORM 19-39

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Title Omitted In Printing]

HEARING ON ORDER TO SHOW CAUSE
RE PRELIMINARY INJUNCTION

October 6, 1972

Before:

Honorable CLARKSON S. FISHER, U.S.D.J.

Appearances:

HERBERT J. STERN, United States Attorney,
By: RICHARD W. HILL, Assistant U.S. Attorney,
For the Government.

BALL, BROEGE, FOGEL & WEINGLASS,
By: JEFFREY E. FOGEL;
KAIRYS & RUDOVSKY (Pennsylvania Bar),
By: DAVID KAIRYS,
Of Counsel.

Reported by:
Lynne T. Attardi, C.S.R.,
Ashley B. Carrick, C.S.R.,
Official Court Reporters.

[2] THE COURT: Spock v. David; ready?

MR. KAIRYS: It is, your Honor.

THE COURT: Is Mr. Hill here?

MR. HILL: Yes, your Honor.

MR. FOGEL: Good morning, your Honor. My name is Jeffrey E. Fogel from the firm of Ball, Broege, Fogel & Weinglass, a member of this Court from the State of New Jersey, appearing here for the purpose of introducing Mr. David Kairys to this Court. Mr. Kairys is a member of the Bar of the State of Pennsylvania, the Eastern District of Pennsylvania, and the 3rd Circuit Court of Appeals, a member in good standing and of

good character; and I ask the Court to move his admission for the purposes of this matter.

THE COURT: Pro hac vice?

MR. FOGEL: Yes, sir.

THE COURT: I know Mr. Kairys. The motion is granted.

MR. FOGEL: Thank you, your Honor.

MR. KAIRYS: Thank you, your Honor.

THE COURT: What can we stipulate?

MR. KAIRYS: Well—

THE COURT: If anything.

MR. KAIRYS: As I understand it, your Honor, [3] Mr. Hill and I are prepared to stipulate that the letters marked Exhibits 1 and 2—

THE COURT: Attached to the complaint?

MR. KAIRYS: —attached to the complaint, the letter requesting to be admitted to the Base for the purpose of campaigning written by the four candidates, and the letter in response from the Base, were in fact written and are authentic, and, secondly, as to the candidates, that Plaintiffs Spock and Pulley did attempt to enter the Base on foot as described in the complaint and were refused to enter and, hence, prohibited from entering the Base.

We can stipulate as to plaintiff Hardy that he was, as described in the complaint, leafletting announcements of anti-war demonstration outside of McGuire Air Force Base. He was on the parking lot, and he was placing the leaflets on the cars.

As I understand it, Mr. Hill will not stipulate that he was peacefully leafletting, although there is nothing in his records to indicate that it was anything other.

MR. HILL: Your Honor, for the purpose of this hearing, we'll stipulate that at this time Mr. Hardy was peacefully—

MR. KAIRYS: You will?

[4] MR. HILL: —placing leaflets on windshields of cars in the parking lot adjacent to Timmerman Theatre in the heart of Fort Dix.

THE COURT: Fort Dix? You mentioned McGuire Air Force Base.

MR. KAIRYS: That was as to the leafletting. The leaflet announced the demonstration, the upcoming demonstration at the McGuire Air Force Base.

MR. HILL: We will also stipulate, your Honor, that the plaintiffs, John Ginaven and Donald Misch, were given Bar notices as set forth in Exhibit B attached to the complaint. Exhibit B is only Bar notice as to the plaintiff Ginaven but a similar Bar notice was received by the plaintiff Donald Misch.

Similarly Alan Hardy was given the Bar exhibit which is set forth in Exhibit E, which is annexed to the complaint.

Defendants are unable to make any stipulation with respect to the plaintiff Robert Stanton because his claim dates back to December of 1968—rather still in our opinion—and we have no records on that at this time and there is no foreseeable reason we believe we'll be able to find it.

THE COURT: Is he a necessary party?

MR. KAIRYS: He is here and he is ready to [5] testify about that occurrence.

THE COURT: I don't know how it is going to help me as far as his presence—

MR. KAIRYS: He has an outstanding Bar notice. He has been informed if he goes on the Base he is subjecting himself to six months.

THE COURT: Does he have it with him?

MR. KAIRYS: It is annexed to the complaint.

THE COURT: You can't stipulate to that?

MR. HILL: I don't know. It looks like that's what he received and for the purpose of this hearing—

THE COURT: I am just trying to whittle this testimony down to where we could come to grips with the problem.

MR. HILL: The Bar notice looks authentic, and for the purpose of this hearing we will agree that he received it.

THE COURT: Okay.

MR. HILL: In December of 1968.

THE COURT: And what was that plaintiff's name, again?

MR. KAIRYS: Stanton.

MR. HILL: Hardy.

THE COURT: Oh, no. You have already stipulated [6] that.

MR. KAIRYS: Stanton.

THE COURT: Stanton.

MR. KAIRYS: Robert Stanton, your Honor.

MR. HILL: Excuse me, Robert Stanton. That Bar notice is dated.

MR. KAIRYS: Mr. Hill, there is one other exhibit attached to our complaint, Exhibit D, which is a copy of Regulation No. 210-26, Fort Dix. Can we stipulate that that is an authentic copy of the Regulation and that that Regulation is in effect?

[7] MR. HILL: Yes, and we also stipulate that the regulations which I served on you with our brief and provided the Judge are the regulations which are in effect.

MR. KAIRYS: Certainly.

Your Honor, Exhibits A to F annexed to the Complaint have been marked as Plaintiffs' Exhibits 1 through 6.

THE COURT: Without objection.

MR. HILL: Without objection.

MR. KAIRYS: Your Honor, I would like to make a brief opening statement just to clarify why we are here and why we are not here, and certainly if Mr. Hill wishes to respond—

MR. HILL: I was going to say while we are on the stipulation at this point I would ask the Court to consider, since this is an application for a preliminary injunction, the affidavit submitted on behalf of the defendant in this matter, four affidavits, one of Colonel French, one of Colonel Olsen, and two other captains, authenticating certain military police matters.

THE COURT: They are filed in the suit?

MR. HILL: Right.

MR. KAIRYS: Your Honor, in the papers I [8] received from the Government a number of what I consider nonissues are raised, and I would just like to state what I think they are and what issues are not.

The Government has claimed that you cannot issue a preliminary injunction on quite a few grounds, mainly seemingly based upon the fact it would be a mandatory injunction, as they call it. Now, I have never understood the difference between a mandatory injunction and a prohibitive one. One is supposed to be affirmative and one negative. You can frame it either way. You can say they can't stop him from going on the base or they must let him go on the base. Either way it is the same result.

In any event, as is clearly the law, notwithstanding the one decision on the arbitration act cited in Mr. Hill's brief as set out in Paragraph 65.04 of Moore's Federal Practice, it seems that the status quo is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from.

In such a case courts of equity issue mandatory writs before the case is heard on the merits, so [9] whether it is characterized as mandatory or preventive, it is clear that the Court has power to do that.

I would also point out that Rule 65(a)2 of the Rules of Civil Procedure specifically spell out that after a preliminary injunction is issued or even before the hearing on that injunction can be consummated and can become the whole trial of the case—

THE COURT: If there is no more testimony and proofs to be offered—

MR. KAIRYS: Right. Moore also indicates it is important as to whether such an injunction should issue that the writ may be defeated in the event the injunction is not issued, which is the circumstance here.

THE COURT: All right.

MR. KAIRYS: The second thing is the Government complained we have not verified our Complaint, and we don't have affidavits. We are not seeking any injunction based on paper work, on affidavits, or allegations. We have asked for a hearing at which your Honor will hear both sides, and whatever witnesses under sworn testimony would be offered by both sides, so that a verified [10] Complaint and affidavits are not necessary, so I

don't want to get into a hassle about whether my affidavits on the preliminary injunction is complete.

THE COURT: Don't worry about that.

MR. KAIRYS: I'm not going to summarize our argument, but I will wait for the end. I would like to point out what I think is the real issue. Given the Flower decision I think the issue is whether the Fort Dix Army Base is an open base pursuant to that decision, and that I think is the crucial fact in this case, and the fact is that we hope to develop testimony that it is in fact an open base.

THE COURT: Is that what your proofs are going to go to?

MR. KAIRYS: Mainly. We also have to prove the other instance, because there is no stipulation.

THE COURT: I have read your brief and know your position.

MR. HILL: Just one brief point, your Honor. The United States believes that the major case for your Honor to consider is the Flower case, but I don't think we can narrow or limit the question as to whether the base, Fort Dix, is open or closed. [11] The word "open" and the word "closed" are simply conclusions. I think we have to look at the specific facts, and we can't deal with conclusionary language. Simply I think we have to look very carefully at the circumstances under which the Flower case was decided before we can make any judgments as to how far that case should be extended.

I will represent later in my final argument, after the conclusion of any arguments that plaintiff has in this matter, that this matter should be severed, that is, there should be a severance between the plaintiffs who are candidates for national political office and the plaintiffs who merely wish to distribute literature on the base.

MR. KAIRYS: May I proceed, your Honor?

THE COURT: Yes.

JASPER R. JOHNSON, examined on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

THE COURT: Are you a light colonel?

THE WITNESS: Colonel.

Q Colonel, where are you now stationed?

[12] A Fort Dix, New Jersey.

Q Are you here to respond to the subpoena of the commanding officer of Fort Dix?

A I am.

Q And you were designated by him as his representative to respond to that subpoena?

A Yes, I am.

Q Colonel, would a campaign addressed by a candidate for President of the United States interfere with military activities on Fort Dix?

MR. HILL: I object. This was not within the grounds or scope of the testimony which the subpoena addressed itself to. We have been given a specific list of questions and asked to produce an officer who would be prepared—a competent officer to testify on that particular ground.

We could have produced another witness. This is not within those questions, and I do not believe that Colonel Johnson is an appropriate officer to whom such a question should be directed.

MR. KAIRYS: I subpoenaed the commanding officer of the defendant. In this case I specified on the subpoena that he could send a representative, and I also specified, so we would save time, some of the questions that I intended to ask. I wanted [13] him to bring certain information with him concerning for instance how many personnel live on the base, things like that. I specifically said they would be requested inter alia to answer the following questions. If you like, I will supply you with a list.

THE COURT: That doesn't disturb me as much as how could he possibly answer that if it has never happened.

MR. KAIRYS: That is their main argument. It interferes with the base. I want to know how.

THE COURT: In his opinion how it would?

MR. KAIRYS: He's a representative of the commanding officer. That is how he was subpoenaed.

THE COURT: All right.

BY MR. KAIRYS:

Q Can you answer that, Colonel? It's a pretty broad question.

A Would you repeat the question, please.

MR. HILL: May I be heard on one more point. We specifically submitted an affidavit by Colonel French on this very point, and again we were honestly attempting to comply with plaintiffs' subpoena in this matter, and I think it is unfair to permit this officer, who is brought here to be a fact witness, to state opinion. This man has not been [14] subpoenaed as an expert witness.

THE COURT: Mr. Hill, I don't know how we're going to get along if you object to every question, but you do that if you think it's necessary. If the question is too broad—and I can see it might be—if he has no opinion he can say that. I think the colonel can take care of himself.

Reask the question.

Q Colonel, would a campaign address by a presidential candidate or vice presidential candidate for national office interfere with the military mission at Fort Dix?

A I think it could lead to interference.

Q Why?

A First of all, the policy at Fort Dix is nonpartisan as far as political parties are concerned and we try to stick to that rule. It doesn't matter whether it is the Whig party, the Tory party, the Socialist party, the Republican party or the Democratic party.

Q Is that all?

A No. I have not finished.

Q Go right ahead.

A It's a very broad question. I can see if you let one party in, no matter what their conduct is, it could

[15] lead to other parties coming on and causing all kinds of problems which would lead to something that would interfere with the mission on the post.

Q How would that interfere with the mission on the post, assuming these candidates were willing to comply with reasonable regulations as to time and place that they come on the base?

In other words, assume the candidates are told on a date they suggested that there was a convoy coming through that day, or that there was a particular situation where a particular suggested date for such an address was not good for the Army, and suppose they would comply with that kind of reasonable regulation as to time and place of such an address, how would it then interefere?

A Well, it would be very difficult to say, like going into many, many ramifications that I'm not prepared to answer, since we have never had or permitted anyone to come on the base like this.

Q Tell me, soldiers on the base, are they free on the base to read books?

A They can read a book.

Q Can they read newspapers?

A They can read a newspaper.

Q Can they watch TV?

A Yes.

[16] Q Listen to radio?

A Yes.

Q Play sports?

A Yes.

Q Can they discuss issues that they read in books or hear on television or any of these things? Can they discuss them among themselves?

A Surely.

Q Can they just lounge around some of the time?

A When they are off duty.

Q Right. Doesn't this, does the fact that they read books, newspapers, listen to television and radio, play sports, discuss things, and just hang around, does that interfere with the military mission?

A Not when they are off duty, depending on whether they draw crowds or what have you. We're talking about an individual discussing with another individual. I think that's quite common.

Q Are you familiar with the Army Times newspaper?

A Yes, I am.

Q Under whose auspices is that published?

A To the best of my knowledge it is a private concern, a private publisher.

Q Is it generally available on the base?

[17] A Yes, it is.

Q Do the soldiers read it? Are they encouraged to read it?

A I can't say they are encouraged to read it. They do read it. It is available just like any other newspaper.

Q Are they permitted to consider what it discusses, to think about it and discuss it among themselves, what might be said in the Army Times?

A I am sure they are.

Q Does that interfere with the military mission, the fact that they can consider and read and discuss the Army Times and whatever it raises?

A No, not if they're discussing it without having a congregation or inciting any riots, just like you and I are talking now. It's fine.

Q We're not talking about presidential candidates inciting any riots either.

MR. HILL: May we have a brief two seconds recess?

THE COURT: Yes, sir.

MR. HILL: Thank you, your Honor.

MR. KAIRYS: Your Honor, could there be marked as plaintiff's Exhibit No. 7 a copy of an Army Times dated October 11, 1972?

(P-7 marked for identification.)

[18] MR. HILL: I have no idea what relevance this would have in this particular case. We're not dealing with the right of a private newspaper to distribute a copy of a periodical on the post.

MR. KAIRYS: The relevance will be very clear very shortly.

THE COURT: I will permit it because the case has to be reviewed. Whether or not I consider it will be different.

Q Can you identify this, Colonel, Exhibit P-7?

A It's an Army Times dated October 11, 1972.

Q Would you turn to page 15, please. What is on that page 15?

A Do you want me to read it?

Q Yes.

A "Why President Nixon is the man to watch your tax dollars.

"When someone talks about reforming the tax structure, the first question that comes to mind is: How? President Nixon says reform must be broad based, very fair, very equitable. Senator McGovern wants to go far beyond that. He wants to 'redistribute income.' Whose income? The middle class—hardly folks with money to burn.

"But then again, a 'President' McGovern would need [19] lots of money for running the Government. He has said he would give $1,000 to every American, whether it's needed or not. He has said that jobs should be held by everyone—even if the Government has to create them. He has a program which according to the Office of Management and Budget, would cost the taxpayers $150,000,000,000 above what is being spent today.

"Extravagant, to be sure. Senator McGovern's extravagance does not extend to the military. That's one area in which he talks about budget cuts—32 billion worth of cuts. One result of these would be the closing of some 500 bases in a single year.

"So under George McGovern the serviceman and his family face the prospect of a closed base—a higher tax burden—a militarily weak America—and who knows what else?

"President Nixon—now more than ever? It's something to think about.

"Here's how to vote for President Nixon: Contact your unit voting officer for your federal post card appli-

cation (FPCA—standard form 76). Your voting officer will answer your questions.

"President Nixon now more than ever.

"Paid advertisement published and paid for by the Finance Committee to Re-elect the President."

[20] Q How big is that advertisement? Does that take in the entire page?

A It takes this page, yes (indicating).

Q Will you show that to his Honor?

THE COURT: Do you think that the Senator is going to demand equal time?

MR. KAIRYS: I don't know, your Honor.

BY MR. KAIRYS:

Q Colonel, does it interfere with the military mission for soldiers to read Page 15 of that exhibit?

A Not to my knowledge.

Q Is it—

A I really can't say.

Q Is it disruptive? Would it disrupt things if soldiers read that?

A I don't believe so.

Q How about if they thought about it and talked about it to each other? Would that disrupt things?

A I don't believe so.

Q All right. And if they gathered in a group and discussed it, would that disrupt things, assuming they are not going to do their duty?

A It all depends on their intent.

Q Well, what intent would make it disruptive for them to gather in their offtime and discuss Page 15 of that [21] newspaper?

A Oh, I can think of situations where it all depends on who they are, what they are trying to accomplish. If it becomes a partisan-type thing, then it certainly is not going to help on non-partisan policies.

Q Is that a partisan or non-partisan?

A I would say that it is very partisan.

Q It is?

A Uh huh.

Q Is it political or non-political?

A Obviously.

Q Obviously what? It is political?

A Yes.

Q Are you familiar with the Regulation cited on behalf of the Commanding Officer who you are here to represent that speaks of prohibiting service personnel from participating in partisan politics? Are you familiar with that Regulation?

A Generally.

Q To your knowledge, would that Regulation be interpreted by the military to include someone who would read Page 15 of that newspaper, think about it and discuss it? Is that participating in partisan politics?

A Well, in my own opinion, no.

Q Okay. Then would it make any difference if [22] they listened to a candidate, whether it be President Nixon, Senator McGovern, Dr. Spock or Linda Jenness, listened to what they had to say and thought about it, and perhaps discussed it with other soldiers?

A They can go off post and listen to it.

Q Well, whether or not it was off-post, would it interfere with the military mission? Would it be disruptive?

A It could be, depending upon the circumstances.

Q Any more or less than this could be?

A This is a piece of paper.

Q That's right.

A This does not attract crowds.

Q Are you saying, then, that it's only the spoken word that may interfere with the military mission, not the printed word?

A I am sure that people can listen to it over the radio. They can hear it on TV, and if it's not—

Q They do; don't they?

A Yes.

Q They do; don't they?

A Yes.

Q Don't they regularly watch television?

A I can't say they regularly watch it. They are usually pretty busy.

Q Aren't there campaign shows on television?
[23] A I'm sure there are.
Q For various candidates?
A Various candidates.
Q Did you ever hear on television, the Peoples Party?
A I can't say I heard.
Q Did you ever hear one for the Socialist Workers Party?
A I can't say that I have.
Q Well, then, if it's not in interference with the military mission for that newspaper to be on Base with that Page 15 in it and for the soldiers to read that, to think about it, to talk about it amongst themselves, why is it interference with the military mission for a candidate from another party to come on peacefully at a reasonable time and place and speak to them?
MR. HILL: Your Honor, this question has already been asked.
THE COURT: Well, it's obvious. Do you want him to answer it? It's obviously a different situation.
MR. KAIRYS: I'd like to see why he thinks it is.
THE COURT: All right.
MR. HILL: I think he already answered it.
[24] THE COURT: I can see why.
A Well, it is a completely different situation than this. Generally it is not analogous.
Q And why is that? Is it just the fact that it's the spoken word and a crowd might gather?
A As I pointed out before, we in the military, especially Fort Dix, try to remain non-partisan as far as political parties are concerned, any political activity is concerned.
Now, when we have the gathering of crowds or bringing in an individual there you could possibly cause a gathering of crowds, this could hurt our mission.
Q If the time and the place of such gathering is known, it can be peaceably accomplished, can't it, as it could anywhere in the middle of a city? Senator McGovern and President Nixon have both visited the city of Philadelphia and have had peaceful rallies. Is that impossible to do on a Base?

A It may not be impossible, but we can't let one do it and not let another. So we still have to remain non-partisan.
Q Well, are you non-partisan by allowing circulation of Page 15 of that newspaper?
A Oh, I think so, because we have the New York Times. We have Playboy. We have all types of newspapers and magazines that anybody can read.
Q But what if a candidate wants to come and speak [25] in person? What if a candidate can't afford to buy television time, can't afford to buy ads in newspapers or ads in Playboy Magazine, or doesn't want to buy ads in Playboy Magazine? What then?
A What about it?
Q How can they be heard?
A Well, it can't be heard in Fort Dix because of our non-partisan policy, not in person.
Q I am not asking what the policy is. We all know the policy. What's the reason for the policy?
A Well, because we in the military must remain non-partisan. That's the policy that's been announced. That's the policy that we have to follow. We are just an instrument of that policy. That's all. We don't make it. We don't—all we do is carry it out when we are required to do so.
Q Are military personnel encouraged to vote?
A Yes.
Q Are they encouraged to vote intelligently—by that I mean to listen to candidates and to make up their minds?
A We encourage the men to vote. That's all.
Q But you don't allow candidates to speak to them on the Base?
A No. A man can go off the Base and hear candidates, [26] if he so desires.
Q Not if he's restricted to the Base?
A No, not if he's restricted.
Q And many persons are restricted to Fort Dix, are they not?
A Well, how do you mean "many"?

Q Well, you tell me. Are there a lot—are there a lot of men restricted?

A In my estimation, there are not a lot of men restricted. No, "restricted" has many connotations, you know.

Q Are you not restricted for the first month or so in your basic training at Fort Dix, restricted to the Base?

A Primarily because of training.

Q So you can't go off the Base?

A Well, Wrightstown is also full.

Q Well—

A A man is not given a weekend pass and this sort of thing for the first four weeks. After the first four weeks he is given a pass to go home. But he can go in to Wrightstown. He can go in to the USO in Newark or any place else.

Q Okay. Let me just finish up then in this area with one question. What possible interference with the [27] military mission would be accomplished by on one given day setting aside a time and a place reasonably chosen by the military for any political candidate who wanted to address the soldiers to come on to the Base and do it?

A Well, I will repeat again: We cannot permit it because of our non-partisan policy.

Q Besides the non-partisan policy, what effect would it have on the military mission in Fort Dix? Would it interfere with it?

A It certainly could lead to it.

Q Any more than that ad?

A A little more so.

Q Why?

A Because of the possibility of creating crowds, enticing riots, and what-have-you, which would be a violation of military discipline, law and order.

Q You just said that it was okay for soldiers to discuss that ad now in a newspaper, that that's okay. Now, does that have the possibility of creating a crowd, of starting an argument, of starting trouble?

A Not likely.

Q Why not likely? What if one of them is for Senator McGovern and one of them is for President Nixon

and one of them is Dr. Spock and wants to know why his candidate can't be heard at all? Why is that any less [28] the possibility of trouble rather than gathering to hear candidates?

A It's not likely. Anybody can have a fight over anything. It could be a spontaneous thing. If it's not planned.

Q All right. Are you familiar with the orientation program for the soldiers on the Base?

A I have a general knowledge.

Q Are they told that the Base is open or closed?

A I don't know that they are told that it is closed or open either.

Q You don't know?

A No. I am told that they can invite their parents down and their friends.

Q Are you familiar with any advice that might be given concerning being absent without leave and the fact that they—the fact that they can leave the Base since there are gates, without being seen? You are not—Are you familiar with that orientation program or not?

A Not with that, no.

Q Okay. Colonel, with respect to the specific questions on the subpoena, I understand you came prepared to answer questions Nos. 3, 4, 5, 8 and 9; is that correct?

A That's right.

Q Okay. Question 3 was, or it concerned the kind [29] of business concessions, et cetera, by civilians on the Base. Now, is there any?

A There are concessions, yes.

Q What are they?

A We have an optical shop. We have drycleaners establishments, beauty parlor, barber shops. We have what we call canteen items. These are called vending machines.

Q These are all provided by private concerns that have concessions with the Base, have contracts?

A They do have concessions, yes, sir, that is correct.

Q And they then come on to the Base to discuss business, say; before they got their concessions they

would presumably have come on to the Base to discuss this with someone at the Base?

A Yes. They are invited to come on.

Q Okay. And they discuss business then with the soldiers that they deal with?

A No, they do not.

Q Or the military. Well, isn't it in a sense of selling their wares, in their concession?

A Well, they are there to provide a service, yes.

Q Right, and they would discuss the provision of that service with soldiers?

A Yes, sir. If a man wanted his shoes repaired, they talk about having his shoes repaired, I presume.

[30] Q So soldiers are permitted on the Base to discuss business matters if there is an appropriate business matter?

A You can't say that.

Q Well, why is that wrong?

A It is pretty broad.

Q I am saying: Some civilians are permitted on the Base to discuss business matters?

A Yes, some civilians are invited on the base to discuss business matters.

Q Now, if anyone—if myself, if I went on to the Base and was interested in providing a concession and went to the Commander's office and said, "I'd like to inquire about providing this concession," have I entered the Base illegally, doing that?

A Unless you've been invited, you might say illegally.

Q What makes it illegal?

A Because you are supposed to call and have an appointment. We have a Regulation to this effect.

Q Is there anything at the entrances to the Base that says that—that no one is admitted unless invited?

A I don't really know. I don't think so.

Q Is there a sentry—are there sentries at the entrances who would check to see if I had an invitation?

A Not all the time, no.

[31] Q Usually?

A Occasionally.

Q Occasionally?

A Uh huh.

Q What kinds of occasion? What kinds of occasions are there sentries?

MR. HILL: Your Honor, I have an objection to that question because I did advise Mr. Kairys before the hearing that with respect to access, with respect to presence of sentries, that the Provost Marshal is here to testify specifically in that area.

THE COURT: All right.

MR. KAIRYS: Fine. We'll wait for that. I will withdraw the question, your Honor.

[33] Q Does that interfere with the military mission?

A No, that would not.

Q Does the possibility of a problem subject there with music, with a dance?

A That's perhaps a possibility. There are always possibilities.

Q What sort of bands are these that come in?

A Most of these are USO sponsored type bands.

Q I see. There is a rock concert coming up soon; isn't there?

A No.

Q No?

A No.

Q Are there not signs on the base?

A It was cancelled last night.

Q It was cancelled last night?

A Yes.

Q Why was that?

A One of the rock outfits didn't show—wasn't going to show.

Q Where are these rock concerts held? Where would they have been held?

A Are you familiar with the post?

Q Slightly. If you have a map and would like [34] to show it, that's fine.

A Well, it's by the sports arena.

Q By the sports arena?

A Yes, uh-huh.

Q And how many people do you estimate would gather for such a thing?

A Well, we could accommodate, oh, maybe up to 5,000.

Q You could?

A (No response.)

Q And would they be dancing?

A Well, let's put it this way: They might be, but certainly not intended for them to be dancing.

Q But it could happen?

A Possible.

Q What other kinds of bands or entertainment groups? You say they were provided by the USO; is that right?

A Most of them, yes.

Q Has anything like the Bob Hope troupe come onto the base?

A To my knowledge, no. Now, I've only been there since the 6th of June this year, so I can't tell you.

Q Oh, I see. All right. Perhaps I'll save that then for Colonel Olsen, since he's been there longer.

All right. Go on then. What other kinds of [35] gatherings or meetings are there?

A Well, we have quite a few guest speakers at the chapel, individuals, in furtherance of our religious program. We have business people come down to address our Middle Managers Association, and all of these type meetings are to improve training of supervisor administrators. Of course, we know the subject before they ever get there and what they are expected to discuss. We've had alcohol and drug abuse workshops.

Q There are civilians coming on to address?

A They invited these people, pretty well known individuals who are specialists in the field.

Q Let's be more specific. You said there are speakers about religion. Can you give us some examples of who they are, when and where they spoke, and what kind and size of audience they spoke to?

A I can only estimate the audience. May I refresh my—

Q Certainly.

A We had Father Richard Bartley who conducts the Spanish Mass at Fort Dix every Sunday. And we have a Father James Lloyd, who speaks on the World Day of Prayer. And we had the Alpha—let's see—Omega Players from Dallas, Texas, which presented religious drama at the chapel. I'd say if the chapel was full, it would probably [36] be—I'm just estimating now. I really don't know—about 500 at the most.

Q They don't draw as good as the rock concerts?

A I would say no.

Q How about the business speakers? Who were they?

A We had a Mr. W. Earl Masincup. He's assistant director of civilian personnel department of the Army.

Q What did he speak about?

A Position management.

Q Position management?

A Uh-huh.

Q What kind of an audience did he speak to?

A These were what we call our Middle Managers. They are our civilian supervisors, some of our military supervisors.

Q Okay. And what other speakers?

A We had a Mr. Philip Oliver. He's a director of job evaluation and pay review task force for the U.S. Civil Service Commission. He spoke on the job evaluation and pay review.

Q How many people did he speak to?

A Oh, I would estimate no more than 30. That is usually in conjunction with a luncheon.

Q Okay.

[37] A We had a Lieutenant John Harms, New York State Police. That's narcotics. He spoke to Fort Dix—

THE COURT: Excuse me. New Jersey State Police.

THE WITNESS: New Jersey State Police, yes. Then—

THE COURT: I know Harms. That's the reason.

A We have staff members of Rutgers University on a conference on emergency preparedness for public officials.

Q What was that conference about, emergency preparedness for what?

A Well, I really can't tell you since I wasn't there, but I can only assume what officials would do in cases of actual emergencies in the United States, like if you got a flood and what have you.

Q I see. How about the alcohol and drug abuse workshop you mentioned? What people came in for that?

A The individuals?

Q Yes.

A We had a Mr. William Moore, who is the executive director of the National Council on Alcoholism. We had Dr. Abraham M. Schneidmuhl, who was a director of alcoholism, general Baltimore, Maryland, city health department. We had Father Joseph C. Martin, Division of Alcoholism Control, Baltimore, Maryland. We had a [38] Mr. Sanford Farrand, who is a program consultant, occupational alcoholism programs branch, National Institute of Alcohol Abuse and Alcoholism.

Q Is this the same day?

A The same day. Two days. Two days.

Q And how many people attended that?

A Well, there were about 50.

Q Where was it held?

A It was held in the service club. It was for all of the staff officers there at Fort Dix and all the commanders, to make them aware of the drug and alcohol problems that we have.

Q So there are facilities for various size crowds, 30, 50, 5,000?

A Well, if you can call the ball field a facility, you know, where you sit on the ground.

Q Yes.

A Okay.

Q And those kinds of gatherings happen?

A These did, yes.

Q Is it fair to say that people fairly regularly visit the base, civilians, to convey certain types of information to people on the base?

A When invited.

Q Military?

[39] A To do so.

Q Military personnel?

A And when in furtherance of our mission.

Q Is it not in furtherance of your mission, the information that perhaps Dr. Spock or Julius Hobson or Linda Jenness or Andrew Pulley—is the information they would convey not in furtherance of your mission?

A Well, in my opinion, I can't see where theirs or anybody else's is a political nature.

Q Is it any less in furtherance of your mission in page 15 of that newspaper?

THE COURT: Haven't you made that point, Mr. Kairys?

MR. KAIRYS: I want to get at whether he's talking about the contents of what they are going to say, your Honor.

A This is not in furtherance of our mission, no.

Q Now, you said at the beginning that you don't keep track of all meetings; is that right?

A Of all what?

Q Meetings and gatherings.

A No, I don't think so. In the Army we have a system of records retirement. Certain records are maintained in the depository two years, after two years, depending on the cut-off date. Others are destroyed that [40] no longer have any value.

Q Wouldn't there be the possibility and in fact the recurrence of many informal meetings which are never recorded in any way, say, someone comes on to speak to the officers in charge of the concessions, as I said I might do, or someone comes in or is driving through and stops in at the cafeteria and has lunch and meets and talks with some people there?

Doesn't that happen?

A I'm sure that business men who have concessions come on and talk to PX people.

Q And there is no problem with that?

A No, because there is a contract. He's concession. He's authorized.

Q Is it a problem with people who are driving through the base in order to get to the other side stopping at the cafeteria and having lunch; while they are having lunch, chatting with military personnel who are also having lunch?

A It all depends on the purpose. They are not invited to do so.

Q Is it illegal?

A It would be illegal in my opinion, yes.

Q It would be illegal for someone to do that?

A Yes, because they haven't been invited.

[41] Q Okay. Did you bring information on any other meetings and gatherings?

A This is it primarily.

Q Okay. I mean, I don't want more details of the same kind of thing. Any meetings or gatherings of another nature?

A No.

Q Okay.

Question 5: "The number of military personnel living on the reservation."

Do you have that?

A Yes. Now, approximately 22,000.

Q "Number of dependents of military personnel living on the reservation."

A Just a little over 6,000.

THE COURT: Colonel, I'm a little confused. On that first figure you say 22,000 living there. Does that mean people who are officers and noncoms or residents, or does this mean—

THE WITNESS: Well, there are probably—approximately 22,000 military who work there. Now, most of them live on the base because most of them are trainees or in transit and what have you. There are some officers and some enlisted personnel who do live off base. I don't know that number.

THE COURT: 6,000 people who are part of [42] family units; is that right?

THE WITNESS: There are 6,081 as of 30 September who are part of family units living on the base, give or take a few.

THE COURT: All right.

Q Okay. And the number of civilians employed on the base?

A Approximately 2600.

Q The number of civilian employees who are living on the base; are there any?

A There is one civilian employee who lives on base.

Q Who is that?

A Mr. Hernden, who is with the Chief Utilities and Pollution Control Division of Post Engineers. He's there because of emergencies in the utilities.

Q Does he have any dependents living on the base?

A Three.

Q Three. Okay. All right.

Item No. 8: "Government regulations applicable to the reservation concerning voting by military personnel and any information and advice concerning voting provided to military personnel or their dependents."

Did you bring any such information with you or is there any?

[43] A Yes. There is some and it's unavailable. I don't have it here with me, right here.

Q What is the substance of it?

A Pardon? The substance of it is that inform the soldier of his right to exercise his franchise of voting, you know, and tell him how he can do it by absentee ballot or whatever it is, whatever method he chooses.

Q Is he encouraged to vote?

A He's encouraged to vote to exercise his franchise, that's all.

Q Is he referred to any agency for assistance about voting and about registration?

A He's referred primarily to our post voting officer in case he has a question that's not mentioned by the information that we put out to each individual.

Q There is a post voting officer?

A Yes, there is.

Q Who is that?

A Lieutenant Bell.

Q Are you familiar with Lieutenant Bell's duties?

A Yes, sir.

[44] Q Could you explain this, what he has to do if someone comes and says, "I want to vote, what should I do?"

A He would explain how to go about it.

Q How? Would he refer him to any other agency?

A Not if he can answer his question on how to vote. We are talking about the mechanics.

Q The mechanics. I see.

A He would answer that if a soldier came to him.

Q How about if the soldier came to him and says, "I'm not sure how I want to vote," or "Where do I get information on the candidates?"

A He would advise him to go off post to get it.

Q Would he tell him where?

A If he knew where, he might tell him.

Q Item No. 9, access of military personnel and their dependents to education, to mass media including television, radio. Is there any limit to such access?

A No. We have television sets and we have radios. We have all kinds of newspapers. In the post library we have newspapers there, you know, from the major cities of the country. We have newspapers in our PX newspaper stand. We have delivery of newspapers on the post.

Q You have books, also?

A We have a library and books. We have books in the [45] library and we have books in the PX, newspapers, periodicals.

Q Might not those books and newspapers raise issues concerning the war in Vietnam, concerning the election, all the issues now before the electorate?

A Yes.

Q They do, don't they, and they express various partisan opinions, do they not?

A They do.

Q Where are the televisions, are the televisions in the barracks?

A Yes. There are televisions in the barracks. There are televisions in their homes, television in the clubs.

Q Are there also radios in the barracks?

A Yes.

Q Is there any limit on what can be watched in terms of does the set automatically go off when a political speech comes on?

A No.

MR. KAIRYS: We have no further questions at this time.

THE COURT: Mr. Hill, do you have any?

MR. HILL: Just a few questions.

CROSS-EXAMINATION
BY MR. HILL:

Q Colonel, isn't it true that you have a large number of newspapers and magazines sold on the base of [46] varying kinds which express different points of view?

A That is true.

Q Including the New York Times, the Village Voice, and Philadelphia newspapers?

A That type, yes. Yes, that is true.

Q Now, with respect to all business concessions on the base, is it your testimony that before a concession may operate on the base that it must have the approval of the Commanding Officer and it also must be invited specifically to come into the base?

A That is true.

Q And isn't it true that the concessions on the base are for the use of military personnel on the base, their dependents and civilian employees on the base?

A It is primarily for the military personnel and their dependents. There are some exceptions when a civilian employee might use it, for the barber shop, the shoe repair. They can't use that.

Q How about gasoline?

A Military and their dependents only.

Q Do they have to show some sort of identification card?

A Yes, unless they are in uniform.

Q There are PX cafeterias on the base?

A Yes.

[47] Q And do civilians sometimes come in that cafeteria?

A Yes.

Q What is the purpose of permitting civilians to use that cafeteria?

A Well, it provides several purposes. One is for dependents, two is for civilian employees who work on the post, and three for guests of personnel who invite their parents, sweethearts, friends to use it, come down and visit.

Q Is it fair to say that it is primarily used by the military?

A Oh, yes.

Q If you wanted to go into the PX on Fort Dix and were not in uniform, would you be required to show identification?

A Yes, sir.

Q If you wanted to get a haircut, would you need identification if you weren't in uniform?

A Let's put it this way: You should. You should be required to show it.

Q Isn't it true that the entertainment that is provided for the troops on the post is by invitation only?

A True.

Q And the entertainment is for the relaxation of troops?

[48] A That is correct.

Q To bolster their morale?

A Correct.

Q And in that sense it is in furtherance of the military mission of the Post?

A That would be true.

Q Now, with respect to guest speakers, isn't it true that they are only invited if it is felt that they further—their address would further the military mission of the Post?

A That is true.

Q And that the topics they are to speak on are submitted in advance?

A That is true.

Q With respect to the availability of TV in the barracks, I assume that is only during off-duty hours?

A Normally.

Q Colonel, has any candidate for political office campaigned on Fort Dix since you have been there?

A No.

MR. HILL: No further questions.

THE COURT: Any others?

REDIRECT EXAMINATION
BY MR. KAIRYS:

Q Have you ever seen a copy of a newspaper called "The Militant"?

[49] A I have not.

Q You have not seen it at all?

A No, I have not.

Q You have not seen it on sale in the Base?

A No.

Q Have you ever seen any publication in there that endorsed other than Democratic and Republican candidates?

A How do you mean?

Q I mean in terms of the upcoming presidential election. You mentioned that you saw the New York Times. They just endorsed Senator McGovern. Are you aware of any publication available on the Base that endorses or favors candidates other than the Democratic candidates and the Republican candidates?

A No, I have not seen a newspaper that endorses anybody else.

Q You said a couple of times that it is your opinion that no one is legally there unless they are invited. You came here as a representative of the Commanding Officer, General David. Has he informed you that that is the state of the law on Fort Dix, or is that your own impression?

A To be specific, no, he didn't tell me that that was the law.

Q That is your own impression?

[50] A Oh, yes.

THE COURT: What is your position on the Post?

THE WITNESS: Sir, I am the Director of Personnel and Community Activities.

Q You said that the people who speak on the Base speak on topics that the military approves?

A Yes, when they are invited down, yes.

Q So the only thoughts and ideas heard by military personnel and independents on the Base are ones that are approved by the military?

A Would you repeat that?

Q The only thoughts and ideas heard or allowed to be expressed on the Base are ones that are approved by the military, isn't that right?

A That is rather broad.

Q Tell me why it is too broad.

A That could lead to a Pandora's box as far as I can see. What I think I have tried—what I hope I have said is that if there is a speaker who can further the mission of the Base—I gave examples of personnel who addressed the middle management people—then they are invited down and it deals with something pertaining to our mission and training.

Q I see. Well, doesn't the war with Vietnam deal with your mission?

[51] A Oh, yes.

Q Well, what I guess I am trying to get at is isn't it true that the content of what a proposed visitor intends to say is the basis for whether he is allowed to come on or not? If, for instance, he says "I intend to urge the soldiers not to use drugs," that, from what you have said, would be something that the Base might favorably look on. If he is going to inform them of some management principle that they are not aware of—

A That would further our mission, yes.

Q But if they are to speak against the war in Vietnam—

A That certainly wouldn't forward our mission, would it?

Q So the content of what they are to say, that is the basis of whether or not they are approved?

A Yes, to a great extent.

RECROSS EXAMINATION
BY MR. HILL:

Q You are Director of Personnel and Community Activities, Colonel. Will you please tell the Court what that position encompasses and what your relationship is to General David in that capacity?

A It is my job in that capacity—I'll use the letters VPCA, if it's all right with you. It is shorter. I attempt to formulate and advise and recommend policy to the General as pertaining to soldiers as individuals, also dependents, [52] and so forth, as far as his welfare is concerned, administration of his records are concerned. I do not deal with his training per se. I do not supply him. I don't deal with his logistics, as such. Now, this encompasses all of his personnel records, when he comes into the service and while he is at Fort Dix, all the rules and regulations pertaining to how they are kept, and so forth, safety on the Post, which is quite extensive. That would come under me. Civilian personnel and all its problems would come under me. The running of the Officers' Clubs, the Non-Commissioned Officers' Clubs, the PX facilities, service clubs, sports, all kinds of recreation come under me.

The Army Community Services would come under me. Legal Services that we provide for military and their dependents, if they have problems, financially, of if they need any kind of assistance of a humanitarian nature. I also have a baby-sitting service, and I think that generally covers most of them.

Q You are what is called a Staff Officer?

A I am a Staff Officer, that is correct.

Q You are a Staff Officer reporting directly to the General?

A That is correct.

MR. HILL: Do you wish any explanation as to what a Staff Officer is?

[53] THE COURT: No.

MR. HILL: No further questions.

THE COURT: Gentlemen, I am going to take a short recess, and I have another sentence.

(RECESS)

[54] MR. KAIRYS: Are you ready, your Honor?
THE COURT: Yes, sir.
MR. KAIRYS: Call Colonel Olsen, please.

VINCENT I. OLSEN, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Colonel, you are also a representative of Bert David, the commanding officer of the base?
A Yes, I am.
Q And what's your position?
A I am the provost marshal.
Q Provost marshal?
A (Nods head affirmatively.)
Q What does that encompass? What duties does that encompass?
A Provost marshal is responsible for the maintenance of law and order of Fort Dix.
Q Now, I understand you came prepared to respond to Item No. 1 on the subpoena which was—I'll read it to you:

"Access of civilians to the Fort Dix reservation and the facilities on the reservation."

What is the access of civilians to the reservation?
[55] A Well, civilians are authorized on the post. There is those that are employed on the post, those that pass through the post. There is also civilians that visit soldiers on the post.
Q So you can—putting aside employees who, of course, are entitled to access, you can pass through for no reason at all?
A Yes, you can pass through for no reason at all.
Q And you are not stopped?
A It depends on your conduct while you are passing through.

Q Well, let's go through the routine case first, if there is nothing unusual.
A Routine case, pass through.
Q You are not stopped. No matter how you are dressed? If you are in your car, you are running through?
A Well, there are certain proprieties of dress. I wouldn't want to see someone go through naked, assuming a person has clothing on.
Q I said how you are dressed, not whether you are dressed. Okay. You can visit someone there; isn't that correct?
A Yes, you can visit.
Q Okay. Can you come on to discuss business? Suppose you are interested in starting a concession on [56] the base? Is that okay?
A Yes.
Q Suppose you want to come in and see the fort, you are a tourist?
A Yes.
Q That's okay?
A Yes.
Q You can come in and you can ride all around?
A Yes, except certain areas.
Q Which are those areas?
A Those areas that are restricted.
Q And they are marked how?
A Normally with a fence. There may be a guard there or a barrier across the street, but there are signs.
Q Some of them have just a sign; do they not?
A Yes.
Q There's no barrier. But there is a sign saying it's restricted?
A Yes. At times there would be, yes.
Q How many open entrances and exits are there at Fort Dix?
MR. HILL: I object to the use of the word "open," your Honor, because I think, as I have expressed before, that's in conclusion. It's the ultimate conclusion of this case.

[57] THE COURT: All right. Would you accept this: Which are not either guarded by a sentry or which are barred by a barrier? Would you take that?

MR. KAIRYS: All right. Sure, your Honor.

THE COURT: How many?

THE WITNESS: I would approximate approximately ten that are roads, actually paved roads. Now, there are trails. You can walk on Fort Dix on foot, but this is just for vehicle passage. Approximately ten.

Q You can come on on foot?

A Yes, sure.

Q How many of these ten are New Jersey highways?

A New Jersey highways, I really don't know. I would estimate that we have one that belongs to the State of New Jersey.

Q Is that the Wrightstown-Pemberton Road?

A No, I believe that would be Route 68.

Q Route 68. That's a thoroughfare through the State of New Jersey; is it not?

A I believe so.

Q Are there buses that go onto the base?

A Yes.

Q What kind of buses?

[58] A Oh, I believe they are Public Service buses.

Q And they stop on the base?

A Yes.

Q And there is no control who gets on them and who gets off them?

A There is a control on who gets on and who gets off.

Q There is?

A Yes. On our end, at Fort Dix end.

Q Now, there is a bus, as I understand, that comes from the Port Authority in New York?

A I believe so.

Q And you are saying your end people would be questioned as they got off the bus?

A Yes. Especially soldiers out of uniform.

Q Well, I'm talking about everyone.

A No, everyone, no.

Q No. The usual thing is you get off the bus and you go where you please?

A Yes.

Q Okay. Civilians or military?

A Civilian or military.

Q Okay. Are there any other buses besides the Port Authority?

A Oh, I believe there are. But I really don't know.

[59] Q And they are public buses that are accessible to anyone of the public?

A That is correct.

Q Now, let's get to the case of—that you started to bring up before, when someone might be prohibited from the base. When is that?

A Well, if a person has intent to violate any of the existing regulations on Fort Dix, they would be prohibited from coming on Fort Dix to carry out that intent.

Q Well, now, how do you gauge that intent? You don't question everybody; right?

A That is correct.

Q You don't stop everybody?

A That is correct.

Q How do you decide who to stop?

A Well, normally, we have advanced information on individuals coming on the post that would cause this dissent or violate our regulations. This is some of them.

Q Is dissent an illegal purpose on the base?

A Is what, sir?

Q You said might cause dissent.

A No, that would violate our regulations.

Q It violates your regulations to dissent on the base?

MR. HILL: Your Honor, he didn't say that.

[60] THE COURT: Yes, he didn't say that. Strike it.

Q Is that one of the circumstances that gets you thrown off the base, if you dissent or if you are a dissenter, in your own words?

A No, because there must be an overt act. I could be a dissenter entering the base. You as the provost

marshal would not know about it, so, therefore, you couldn't me.

Q You must express your dissent?

A (Nods head affirmatively.)

Q And as soon as you express it, then your presence becomes illegal?

A It depends on the circumstances. These have to be taken case by case.

Q Well, what if you have a button that says, big button right on your chest that says "Support the Socialist Workers Party, Linda Jenness for President"?

A I see nothing wrong with that.

Q That's okay?

A I think the button is.

Q What if you want to hand out leaflets that say the same thing?

A Then I believe you're wrong. We have a—

Q Why?

[61] A We have a procedure to go through such as requesting permission from the Adjutant General to distribute literature.

Q And what if he examines the content of the literature—is that correct?

A That is correct.

Q (Continuing.) —to see if he approves of it and then he decides whether or not it's going to be distributed or not?

A I believe so.

Q What if you rode through in your car and had a banner across the back window that said "Support the Socialist Workers Party, Linda Jenness for President"?

A Nothing wrong with that.

Q Then it's the fact of handing out a leaflet—

A I'm assuming that the banner in the back of the car is not approved either. I don't think it's approved, but we have to see if it's one banner because I've seen a few with different political slogans on, and they are authorized on the base.

Q How about a picket sign, just a stick?

A A sign, no.

Q Just a stick with a sign on it?

A No.

Q No?

[62] A No.

Q How about the picket sign that says "America, Love It or Leave It"?

MR. HILL: Your Honor, I think we are getting much too far afield in this particular situation.

THE COURT: I think you can get to it a little quicker. It's not so much a slogan on a car as it is a person handing out something or actually, if you can put it this way, demonstrating with a sign.

Is that the difference, Colonel?

THE WITNESS: Yes, sir.

MR. HILL: Your Honor, that's what the basis of the Complaint is.

THE COURT: I know.

Q How about talking with people? How about a person who is talking to a group of three servicemen in front of the PX, and he's giving his opinion that the war in Vietnam is bad and that they should have nothing to do with the military?

A Who is this person you are describing? Are you describing another soldier or—

Q No. He's obviously a civilian. He's dressed under circumstances that would indicate he's obviously a civilian. Suppose he has jeans on and a T-shirt.

[63] A Well, his manner of dress has nothing to do with it. If you are inferring—

Q Okay. Suppose he has a coat and tie on.

A I think in that case we would question him as to his intent.

Q Why?

A Because of violating the post regulation which is coming on the post to distribute pamphlets.

Q Okay. I said all he's doing is speaking. He's speaking to three servicemen in front of the PX.

A Just as we are talking now?

Q Right.

A I don't think that would be noticed.

Q Well, I'm assuming it is noticed. Suppose it's brought to your attention.

A And the three soldiers object?

Q Maybe one of them does and two of them don't.

A Then we'd have to look into it.

Q You would inquire into that situation?

A Yes, definitely.

Q And what if you inquired in and found out that he was just speaking to them about the war, and that he felt very strongly that the war is wrong—

A Uh-huh.

Q —and that two of the soldiers agreed with [64] him and one did not as to general population or the post—

MR. HILL: Your Honor, aren't we getting extremely far afield from what this case is all about?

THE COURT: I think so.

Q Would you eject him from the base?

A I don't know. That situation has never happened. I really don't know. In that case I don't think I would personally.

THE COURT: Suppose he's drawing a crowd, Colonel?

THE WITNESS: Yes, sir, then I would.

Q Question No. 2, then, Colonel: "The flow of non-military traffic onto, off of and through the reservation including if no actual counts or estimates of numbers of vehicles and persons."

A The actual count or estimates I do not know. The only thing I can refer to is a traffic survey that was taken in 1970 which indicated that 66,000 vehicles came on the post.

Q Per day?

A I believe it was 66 per day. This was in and out.

Q In and out?

A Yes.

Q Question 6: "Whether civilians were stopped [65] and questioned upon entry"—we've gone through that. Never mind 6.

You referred to some parts that are restricted.

A Yes.

Q Is there a lot of the base that isn't so restricted, either by signs or fences or whatever?

A Well, not by signs or fences. We have three areas that I know are restricted as far as signs and fences.

Q Do you know what area, surfaced area they composed—

A No, I do not.

Q In relation to the base? Is it very large in relation to the entire base?

A No, it isn't.

Q Okay.

A Now, this is—let me—

Q Go on.

A Can I expound on this a little further?

Q Sure. Sure.

A This is restricted in the sense that no one except authorized personnel on the access list that are allowed in here. These are ammunition depots.

Q I see.

A Now, in the billet I believe areas, they are restricted in a sense because they have roving patrols and guards.

[66] Q What's the billet area?

A Where the soldiers live.

Q The barracks?

A The barracks. They have roving guards and you are restricted. A civilian cannot walk in there and walk into the billet. He would be stopped and challenged.

Q The roads in front of the billets are not restricted?

A No, they are free flow.

Q Right. You are just questioned when you come in the barracks?

A Yes.

Q How about the roads around the stockade?

A You can pass up and down the one road, but the road going around the stockade, the present stockade is a restricted area.

Q The road that goes into it?

A That's correct.

Q Okay.

Item 10: "The number of persons ejected and barred from the reservation within the last two years and the reasons."

A I have those figures. In 1956, according to the present roads that we have, there was 56 persons barred, issued letters of ejection by the provost marshal division. [67] This is the military police.

Q 1956?

A No. That's 1971 there were 56 total.

Q Now, wait a minute. Are those bar notices that were issued during 1971 or is that the total number of people who were barred at this time?

A No. This was issued from 1 January 71 to 31 December 71.

Q Okay.

A 56.

Q Go on. I'm sorry.

A And from 1 January 72 to the present date, unless somebody was restricted last night, that figure is 99.

Q And do you have a breakdown on the reasons?

A Yes.

Q Could you give that, please?

A Disorderly conduct, trespassing, illegal solicitation, unauthorized publications, larceny, violation of Title 18, possession of marijuana, assault, possession of stolen goods, carrying a concealed weapon, traffic offenses, possession of narcotics, contributing to the delinquency of a minor, failure to give a good account. That is for 1971.

I believe the list for '72 would be practically the same with maybe one or two differences.

[68] Q Do you have proportions in those various categories or is that just a list?

A I have actual figures.

Q All right. Can you go down them again, please? I don't want all of them. I guess the one I'm most interested in is unauthorized literature.

MR. HILL: Your Honor, I think if we are going to give one, give them all.

Q Give them all. He's trying to save a little time.

A This is 1971 now?

Q Right.

A Unauthorized publications: 7. 1972, 56.

Q 56 out of 99 then in 1972 so far?

A That is correct.

Q What is solicitation?

A Prostitution.

Q Okay. Perhaps you should run down those figures—

MR. KAIRYS:—your Honor, because I'm not sure.

THE COURT: Would you do it?

THE WITNESS: Yes.

Q Which of the others are related to First Amendment activities?

[69] A Disorderly conduct: 11. Trespassing: 9. Illegal solicitation: 12. Unauthorized publications: 7. Larceny: 3. Violation of Title 18: 4—

Q Excuse me. Title 18 is being present there—

A That is a broad category. Since I wasn't there in 1971, I don't know what they are for.

Q Okay.

A But there is only four.

Q How many is that in 1972?

A Two.

Q Okay.

A Possession of marijuana: 1. Assault: 1. Possession of stolen property: 2. Carrying a concealed weapon: 1. Traffic offenses: 1. On possession of narcotics: 1. Contributing to the delinquency of a minor: 1. Failure to give a good account: 2. That's a total of 56 for 1971.

You want 1972?

Q No. Unless—

MR. KAIRYS: Would you like it?

MR. HILL: Can you read down them quickly, Colonel?

THE WITNESS: Yes, I can.

Possession of marijuana: 6. Robbery: 7. Unauthorized publications: 56. Failure to give a good account: 4. Illegal solicitation: 4. [70] Larceny: 2. Violation of Title 18 U.S. Code: 2. Impersonating a female: 2. Disorderly conduct: 22. Trespassing: 4. Possession of narcotics: 1. Unauthorized use of ID card: 1. Carrying a concealed

weapon: 1. Possession of a dangerous weapon: 1. Fraud: 1. Vandalism: 1. Indecent sex acts with a minor: 1. Violations of provisions of a previous letter of rejection: 1.

And that totals 99 for 1972.

Q Okay. Is a civilian allowed to come on and set literature that he wishes to distribute next to, say, where the New York Times is sold? I'll give you a more concrete example.

Assume someone wanted to distribute copies of the Militant, which is a newspaper that is very much opposed to the war in Vietnam. Can they set down their piles of the Militant next to the piles of the New York Times for sale?

A No, because there is a certain procedure you have to go through in order to get the Militant in alongside of the New York Times or any other recognized newspaper.

Q And does that involve approval as to the content of the publication?

A That I could not say. I know that there is a procedure you must go through the Adjutant General.

[71] Q Do you know the procedure? Do you have to submit copies?

A No. I think it's just a written request. That's providing the Militant is a recognized newspaper.

Q Recognized by whom?

A Well, isn't there an association of the press, United Press or all of them together that newspaper publishers, et cetera?

A I see.

Q Would an underground newspaper qualify?

A That's what I'm trying—

Q And underground newspaper would not qualify?

A I think in that case they may ask you to submit a copy of it.

Q I see. But if it's not on this approved list, then you have to submit copies, and the content would be observed?

A That I cannot say. I do not judge that.

Q But they do ask for copies then?

A No. I can't say that either. This is my own personal opinion.

Q I'm saying: If they are not on this approved association list, then they ask for a copy, like an underground newspaper?

A I would think so. In fact, I would hope so.

[72] Q Why would you hope so?

A Because if it's wrong, then I have to enforce it.

Q If what's wrong.

A If the paper is wrong. If it's a paper that is wrong.

Q What makes a paper wrong?

A I don't know. I would say papers—

MR. HILL: Your Honor—

THE COURT: He's told us that's not his job.

MR. KAIRYS: Nothing further, your Honor.

THE COURT: Mr. Hill.

CROSS-EXAMINATION
BY MR. HILL:

Q Colonel, you are the provost marshal; correct?

A That is correct.

Q In that capacity, you are responsible for the security of Fort Dix?

A Yes.

Q How long have you been at Fort Dix, sir?

A Fourteen months.

Q I think your testimony is that as a general matter, there are no sentries at the entrances to Fort Dix; is that correct.

A Yes, that is correct.

[73] Q Isn't that true because of the rural location of Fort Dix and the general inaccessibility of—

MR. KAIRYS: I object.

THE COURT: What ground?

MR. KAIRYS: It's a leading question, your Honor.

MR. HILL: It's cross-examination.

MR. KAIRYS: Of his own witness. He's a representative of the defendant.

THE COURT: We are going to get to it anyway. If he hasn't already given the answer.

A There is a lot of reasons. Fort Dix is remote. It's in a rural area. The number of military police that we are to police the post, the cost of erecting a shelter for the military police. There is a lot of reasons. And with the phase-down of the Army, the money is not present or are the personnel present to police such a large post.

Q Is part of the land posted with No Trespassing signs?

A Yes. The back portion bordering Route 70 is posted "No Trespassing, U.S. Government Property" and in those areas where we do not have a fence.

Q Now, isn't it true that the military police patrol the post on a continuous basis?

[74] A Yes. We patrol the post 24 hours a day.

Q Would you tell me how many patrols you normally have operating at a given time?

A Yes. It varies from five to eight each eight-hour shift, and then payday and the week after payday we increase our patrolling effort.

Q And how many men are on each patrol?

A Two men on the patrol.

Q Now, isn't it—as a general principle, would any civilian on the post behaving suspiciously be stopped?

A Yes. Any civilian or military acting suspiciously.

Q Does Fort Dix have traffic regulations?

A Yes, we do.

Q And has Fort Dix promulgated or adopted the traffic regulations for the post?

A Yes, they have.

Q Even though they apply to some county and some State roads?

A Yes. We have exclusive jurisdiction on traffic.

Q Right. And traffic offenders would be stopped; isn't that correct?

A That is correct.

Q And they will be issued summonses; isn't that correct?

[75] A If they are civilians, they would be issued summonses to the magistrate court.

Q That's to a federal magistrate; isn't that it?

A Yes.

Q And it's true that the United States has exclusive jurisdiction over Fort Dix?

A That is correct.

Q Even over the county roads and the State roads that do travel through the fort?

A That is correct.

Q Now, isn't it true that during the course of the last year, and on perhaps 10 to 12 occasions, you have set up roadblocks at various points on the post including the county roads and stopped vehicles, civilian vehicles?

A Yes, we have.

MR. KAIRYS: Your Honor, we can have Mr. Hill testify if he'd like, but I would object to the leading question. That was a paragraph.

THE COURT: He said, yes, they put up roadblocks. Next question.

Try not to lead too much.

MR. HILL: Yes.

BY MR. HILL:

Q Would you please describe the reasons and [76] the circumstances under which the military sets up these blocks?

A Yes. Primarily, or most of the time we set it up to check on decals, to see if the vehicle is registered on the post. Occasionally, when we have advance notification of demonstrations, we will set up roadblocks to keep the demonstrators off the post because they try to penetrate the post.

Q What about on a daily basis? Is there any effort to check civilian vehicles to determine whether or not they have decals to be on the post?

A Yes. This is done continuous, day and night.

Q And civilian vehicles are in fact stopped?

A Yes, definitely.

Q Now, with respect to concessionaires, if you noticed a peddlar going door to door, would you stop him at all?

A Yes. We would stop him and give him a letter of rejection. If he didn't have the proper authorization.

Q In other words, if peddlars or concessionaires have proper authorization, they are permitted to stay on the base?

A Yes.

Q But if they don't have the authorization of a franchise, they are not permitted?

[77] A That is correct.

THE COURT: Do you recall any times when door to door solicitors have been allowed on the base?

THE WITNESS: Yes, sir. Occasionally they will—well, these aren't solicitors. They are children that are hired by the women's club to distribute pamphlets for the things pertaining to the base.

THE COURT: Social functions?

THE WITNESS: Social functions, yes.

Q But if we're dealing with strictly solicitors, are they permitted on the base without express authorization?

A No, they are not.

Q And is this enforced?

A Yes, it is.

Q Now, there are buses coming onto Fort Dix; is that correct?

A That is correct.

Q To your knowledge, are these buses franchised by Fort Dix?

A I believe they are.

Q Now, in response to question by the plaintiff's counsel, you indicated that in a traffic count, which was done when?

[78] A That was 1970.

Q —that some 66,000 vehicles went in and out of the post on a given day.

A That is correct.

Q So we're not talking about just vehicles entering the post; are we? We are also talking about the vehicles that leave. So we have some sort of a double count there.

A Yes. And one vehicle could come in and out maybe five or ten times.

Q And over how long a period was this traffic study conducted which totalled 66,000 vehicles in and out?

A I really don't know because I didn't take that much time to look to see just what period of time, but I know the count was taken over a period of a week because on any given day this was the figure.

[79] Q Was that for a 20-hour day?

A Yes, 24 hours.

Q If I'm not mistaken, wasn't the count taken at all gates of the post or just one gate? Was it for all gates?

A It was taken for all gates at the same time.

Q Directing your attention to August 17, 1972 when plaintiff John Ginaven and Donald Misch were given letters of rejection, to your knowledge did either of these individuals submit to the Adjutant General of the post in advance of distribution the materials they were distributing?

A No, they did not.

Q With respect to the plaintiff Alan Hardy I direct your attention to February 1972.

MR. KAIRYS: We will stipulate that none of them did, that is with the exception of a letter with regard to the four Presidential candidates.

MR. HILL: Yes. We're just talking about the pamphlets here.

THE COURT: All right.

Q There is a regulation on Fort Dix, is there not, requiring people who wish to distribute literature to apply to the Adjutant General of the post for permission?

[80] A That is correct.

Q I direct your attention to the evening hours at Fort Dix and ask you to tell me the nature of any patrol in the billet area, and in the processing areas.

A Yes. During the evening hours we have the normal five or eight shifts come on and then about 9:00 o'clock as far as Military Police we would put on additional shifts. I have additional three to five shifts come on, so that gives me anywhere from 10 to 11 patrol vehicles.

In addition, each of the units have their own patrols within their barracks area. They patrol their area, and then the post is broken down into five quadrants, and

each unit that has a quadrant will have a patrol in that area, so there are lots of patrols at Fort Dix at night.

Q Is it fair to say that the local policing includes county roads, patrolling them regularly 24 hours a day, seven days a week by the Military Police?

A I would say that the Military Police, and then we have these under guard that would come out on some of the highways, too.

THE COURT: By "unit" you mean either company or battalion?

THE WITNESS: The Fifth Brigade may have their own patrol. That would encompass a State highway [81] and back in.

Q These are Military Police patrols and internal guards of various companies that assert control over the entire post?

A That's right.

THE COURT: The correct term is interior guard.

MR. HILL: Thank you, your Honor.

Q Colonel, if Fort Dix were located in the heart of Philadelphia or any built-up area, would sentries be placed at the gates?

THE COURT: Objection sustained.

MR. KAIRYS: I don't think he's an expert on security.

THE COURT: Have you been to Fort Sam Houston? Have you been stationed there?

THE WITNESS: I have been to the presidio in San Francisco, the heart of San Francisco. They did have guards, and then the times were different. They are not the times of today. This was five years ago. They do have guards at the gate.

MR. HILL: I would also point out to the Court that Sam Houston is a different—

MR. KAIRYS: Are you testifying?

[82] THE COURT: Objection sustained. Next question.

Q Can you tell me how many civilian pedestrians there are, whether there are many civilian pedestrians walking through the post?

A I would say there are a few. I would go that far and say they do walk through the post, civilian pedestrians.

Q A large group?

A Not a large group, just a few.

Q I want you to tell the Court whether or not there are sidewalks that go from one end of the post to the other.

A No, there are not.

Q Were you present when Dr. Spock, Julius Hobson and the other candidates who ran for political office came to the post on September 23?

A Yes, I was present.

Q Could you tell me approximately how many people were with Dr. Spock?

MR. KAIRYS: I object unless you provide a basis for his knowing.

MR. HILL: Who was in the party and—

THE COURT: He can explain it.

A Initially I saw Dr. Spock coming down. I think [83] there were three people with him. There were three or four Secret Service men with him, I think at the particular time, but prior to him arriving a group of about 60 yere waiting for Dr. Spock, and they just crowded around Dr. Spock, as I think—in fact, you were there (indicating).

When we met at the entrance to the post there were about 50 or 60 onlookers or other people that were there, not with Dr. Spock, but at the same time as Dr. Spock.

Q Were they civilians?

A Yes. From all that I could determine they were civilians.

Q Were there any banners carried that were around Dr. Spock?

A They had a banner.

Q Supporting Dr. Spock's candidacy?

A I really don't know what it said. It said something about Dr. Spock. It was a large banner. It was about eight feet long and four feet high with writing on it.

MR. HILL: No further questions.

REDIRECT EXAMINATION
BY MR. KAIRYS:

Q You said some people are allowed to go around to the barracks and distribute pamphlets if they are approved, is that right?
[84] A Not to the barracks.
Q Where?
A I'm sorry if I said that, but to the housing area.
Q The housing area?
A Yes.
Q And there you said was usually children?
A Yes. Teenagers, young kids, twelve or thirteen years old.
Q Pamphlets about what?
A Officers' wives clubs having a tea or the daily bulletin is distributed once weekly.
Q What is the daily bulletin?
A That is a bulletin that is published by the headquarters daily informing personnel of changes in regulations, different functions.
Q Do they distribute these things around the PX, cafeteria?
A This is done in the housing area.
Q Just the housing area?
A Just the housing area.
Q Just so we will have it straight, the number 66,000 is the number of civilian vehicles coming in and out?
A The number of vehicles. They could be military or they could be civilian. They could be commercial vehicles.
Q Do you have a breakdown as to—
[85] A No, I do not. I'm sorry.
Q You don't have the answer to that question as to the really nonmilitary vehicles?
A That is correct.
Q In other words, it's no more than 66,000 because that is the total, but you don't know in between there which is which?
A That is correct.
Q That is because you don't keep track of who comes on or leaves?

A No. That is not the reason why we don't do it, because it serves no general purpose to determine how many vehicles are coming on and off the post unless we have a reason.
Q The reason you don't know the breakdown is because you don't keep track?
A The reason I don't know the breakdown is the survey was taken in 1970 and I have a piece of paper that says it, but they didn't break it down.
Q All right.
You explained the law enforcement activities, the patrols that are out. It is very much like the patrols or police situation in any community, isn't it?
A I would say yes. We follow certain procedures.
Q And they are there to patrol as to military [86] personnel and civilians whoever is on the base?
A That is true.
MR. KAIRYS: I have nothing further.
MR. HILL: Nothing further.
THE COURT: We will break until 2:00 o'clock.

(Luncheon recess.)

[87] AFTERNOON SESSION

MR. KAIRYS: We will call Dinah H. Portnoy.

DINAH H. PORTNOY, affirmed.

DIRECT EXAMINATION
BY MR. KAIRYS:

Q What is your address?
A 3605 Hamilton Street, Philadelphia.
Q Where do you work?
A At Philadelphia Resistance in Philadelphia.
Q What kind of work do you do at Philadelphia Resistance?
A Philadelphia Resistance is an antiwar group, and we all work on different projects. Between August 1970 and August '71 I worked at the military legal center in

Wrightstown, New Jersey as a military counselor in antiwar work.

Q You say as military counselor, what does this mean?

A Mostly people would come in to the office who had certain kinds of legal problems in the Army, for example they wanted to know how to get a discharge. They wanted to know what certain rights were, or they needed civilian legal counsel for a court martial, and we provided them with all that information.

[88] Q There was a lawyer on duty then?

A Right.

Q In the course of that work did you have occasion to go onto Fort Dix Army Base?

A All the time. During that year I went to Fort Dix sometimes as often as three times a week and sometimes just once. That was every week during that entire year, in order to get to Wrightstown I drove on Route 68 to the base. For a while I had a friend who lived in Browns Mills, and in order to get there I would drive on Texas Avenue that goes right through the base between Wrightstown and Browns Mills.

Q You would use Texas Avenue and Route 68 as a thoroughfare?

A Right. I also had to go on the base for other kinds of things.

MR. HILL: I don't think there is any question pending.

THE COURT: Next question.

Q What building or facilities did you visit while on the base?

A Several times I went to different barracks, either to pick up somebody who needed a ride to get to the military legal center or to go to see somebody who couldn't get out of their barracks, and there was usually a sign [89] over the door saying "Visitors go to orderly room." And you could go to the orderly room and ask to see anybody.

Q Were you ever excluded from the barracks?

A No. I also went to several court martials in those buildings and to the PX cafeteria when I was like on the

base all day at a court martial, and a couple of times to visit a judge advocate general officer.

Q And did you and other people on the project use other facilities such as the theater?

MR. HILL: Excuse me. This question is highly leading. He may ask what facilities she used.

Q What other facilities did you and other people on the project—civilians, I'm talking about, not military—use?

A Most of us visited the places mentioned. One person I know who worked there longer than I did had been to the movie theater several times.

MR. HILL: Is she testifying to this from other than her own knowledge?

THE COURT: What difference does it make? Next question.

MR. KAIRYS: I have nothing else.

MR. HILL: We have no questions.

THE COURT: Call your next witness.

[90] ROBERT STANTON, affirmed.

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr Stanton, where do you work?

A I am a radiation physicist at the University of Pennsylvania.

Q On December 5, 1968 did you enter the Fort Dix Army Base?

A Yes.

Q What happened?

A I went to one of the barracks areas. I entered one of the barracks with leaflets, and when I began to pass them out I was stopped by a sergeant and told to go to the orderly room. From there some Military Police people came and took me to another building where I was questioned, and after a few hours was issued a notice of rejection.

Q Did anyone stop you from entering the barracks before you handed out the leaflets?

A No.

Q What was the content of the leaflets? What did it say?

A They were Student Mobilization Committee leaflets. As I remember, they were about an educational teach-in occurring at the University of Pennsylvania to which we hoped to invite people from the base.

Q If this Court granted the injunction that [91] you have applied for as one of the plaintiffs in this case, what is your intent with regard to the Fort Dix military base? What would you do?

MR. HILL: I don't think plaintiff's intent has anything to do with this case.

THE COURT: Go ahead.

THE WITNESS: Shall I answer?

THE COURT: Yes.

A Well, there are several things. Right now there are two demonstrations being organized in Philadelphia by the Student Mobilization Committee and the Peace Action Committee. One is taking place October 26, the other November 18. Also coming up is the election November 7.

What I would like to do is go back onto the base with leaflets about the war, educating on the character of the war, telling people what activities they can get involved in to help end the war sooner. I would also like to speak to people about the antiwar issue with regard to the elections, because I think that is a very important issue people should consider when they are deciding how they are going to vote.

Q Pursuant to that intent will you comply with reasonable regulations made by the Army base as to time and place that you could do these activities?

A Yes, I would.

[92] Q And if they make a regulation you felt was unreasonable, what would you do?

A Bring it back to court. I think an unreasonable regulation should be decided as to its illegality.

MR. KAIRYS: Nothing further.

MR. HILL: Three brief questions.

CROSS-EXAMINATION
BY MR. HILL:

Q Have you been back and forth to Dix since 1968?

A I have not been on the grounds of the base.

Q Have you been on the roads to go through it?

A No, I have avoided it.

Q It was 1968 that you were ejected, is that correct?

A Yes.

Q You brought no other court action against the military since 1968?

A I have not.

Q In 1968 did you ask permission of the Adjutant General to distribute leaflets you were distributing? Would you answer my question?

A No.

MR. KAIRYS: May he complete his answer?

THE COURT: You may interrogate him on [93] redirect.

Q I understood you would like to distribute leaflets later this month?

A Yes.

Q Have you submitted those leaflets to the Adjutant General and requested permission to distribute those?

A The answer is the same as to the other. No, we have not. I don't think we have to.

THE COURT: Anything further?

MR. KAIRYS: No, I have nothing further.

JOHN H. GINAVEN, affirmed.

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr. Ginaven, where do you work?

A With the Central Committee for Conscientious Objectors in Philadelphia.

Q And what kind of work do you do?

A Basically I'm involved in draft and military counseling, helping young men and women by providing information about the alternatives under the draft, and also under the Uniform Code of Military Justice.

Q Did you go onto Fort Dix Reservation on August 16, 1966?

A Yes, I did.

[94] What happened?

A I went on in the afternoon to leave leaflets with some GI booklets that the CCCO has published recently. Actually one of the booklets was one we were leaving. We had the other available—six booklets in all. I passed these out to GI's that came in, came by, and made a concerted effort to stay on the sidewalk, on the road of the Wrightstown Road. We avoided interference with the vehicles on the road, and we avoided leafletting cars, in order to prevent, you know, blocking traffic or anything like that.

In other words, we tried to be peaceable. We leafletted about an hour and fifteen minutes and then the M.P.'s came up and asked what we were doing, took the leaflets and took us to the provost marshal. At that time they detained us in the questioning room for about three or three and a half hours while they checked into basically —into our question whether what we were doing was legal under the Flower decision.

We were aware of the Flower decision at the time. Finally they decided to bar us from the base and handed us the barring orders.

Q What was the content of this booklet, what was it about?

A Basically it's a brief summary of Army regulations [95] permitting discharge from the Armed Forces. It is written in layman's terms so that GI's can understand it, and it also provides a contact where they can get either further counseling or referrals to people who can help them in, you know, thinking through their decisions in regard to discharges.

Q If you were one of the plaintiffs in this case and were granted the right to exercise your First Amendment right on the base, what is it you intend to do?

A I would go back with other members of my organization would go back to provide these leaflets and also to talk to GI's about GI rights, and about the Vietnam war and war and peace issues in general.

Q Would you comply with any reasonable regulations about the time and place of such leaflet distribution and discussions?

A Yes. I think I would if it didn't interfere with my First Amendment rights.

Q If you thought it was unreasonable what would you do then?

A I would do the same thing I'm doing now, come to court.

MR. KAIRYS: Okay. Nothing further.

CROSS-EXAMINATION
BY MR. HILL:

[96] Q Mr. Ginaven, isn't it true that you did not submit to the Adjutant General at Fort Dix the leaflets you were trying on August 17, 1972 to distribute when you were barred from the post?

A That is correct.

Q And isn't it further true that you have not submitted to the Adjutant General at Fort Dix any of the leaflets you would distribute if the Court said you had First Amendment rights?

A That is correct.

MR. HILL: no further questions.

MR. KAIRYS: One further question.

REDIRECT EXAMINATION
BY MR. KAIRYS:

Q Why didn't you supply a copy for their authorization?

A Pardon?

Q Why didn't you supply a copy for their authorization?

A As I mentioned, we were aware of the Flower decision by the Supreme Court that essentially said that you are allowed to leaflet on a public access road to a military base, and you didn't need prior permission, and so we were going under the Supreme Court ruling, which we believed applied to all military bases.

[97] SIDNEY ROBERT STAPLETON, affirmed.

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Where do you work?

A I am treasurer of the Socialist Workers Party campaign.

Q Did you enter Fort Dix Military Reservation yesterday?

A Yes, I did.

Q Would you tell us what happened to you?

A Well, basically I drove onto the fort from Highway 68, which comes in from the New Jersey Turnpike, and as I drove onto the base I noticed there was no particular demarcation or control of flow into the base. There were a couple of brick gate posts at the entrance, but with no gates attached.

I drove onto the base and there was an information booth right close to the entrance to the base, and I drove into the area. There was no one on duty at the booth, but there was a large map of the base indicating where the various facilities were at the base, so I went from there to the—I just drove around in the headquarters area, which was right around the information booth.

Then I went to the PX and cafeteria. When I arrived [98] at the PX and cafeteria I talked to a couple of GI's there and I asked them if it was possible for anyone to eat in the cafeteria where I could get a newspaper, and after having talked to them I got a newspaper and picked up a couple of copies of newspapers, both of which I have here.

MR. KAIRYS: May they be marked. There are two of them.

(Plaintiffs' Exhibits No. 8 and 9 marked in evidence.)

A There was the Evening Bulletin and the County Times. Both of those newspapers had material on campaigns in them. The Burlington County Times has an

editorial endorsement of Nixon and the Evening Bulletin has a front page picture of Shriver campaigning along with a front page box which describes their election campaign including a story on Nixon, a story on McGovern and a story on Agnew and a story on Shriver.

Q Can you tell us if you can identify Plaintiffs' Exhibit No. 7?

A Yes. That is the copy of the Evening Times that I picked up in the PX. After getting the newspapers I went to the cafeteria and ate lunch in the cafeteria. I noticed there were several people there that in my opinion could not have been Army personnel. That is, [99] they were young men with full beards and long hair who were eating in the cafeteria. There were probably five or six of them eating in the cafeteria in the area.

After eating in the cafeteria there, I went to the newsstand, which is associated with the cafeteria and I noticed that there was a very broad range of material in the newsstand that was analogous to a Greyhound bus depot type newsstand with a wide distribution of magagines including Newsweek, Time, National Lampoon, quite a wide distribution of newspapers from the New York Times to the National Enquirer.

There was also a fairly large selection of books that included something like Philip Roth's "Our Gang," which is a satire of President Nixon, and another one called "When the War Is Over," described as being a provoking novel on the horrors of military justice. There were several other, you know, vaguely political books, and then the usual range of Jacqueline Suzanne and so forth.

Q Did you see any newspapers, periodicals that endorsed any candidates in this election other than Democratic or Republican candidates?

A No. There were none of the underground publications or radical publications or anything like that. There was just nothing of that kind there. There were a [100] couple of magazines that would mainly relate to black GI's, a thing called Hep, which had something about Angela Davis on the front cover, but there was no radical

political material like the Daily World or anything of that kind.

Q Can you briefly list any other places you visited on the base?

A Just one thing, in the PX parking area I looked around for cars with Army identification stickers, and I would say that maybe a quarter of the cars in the PX area had no Army identification of any kind associated with them.

I went from the PX to drive around the base and just looked around and drove through the training and classroom areas where, incidentially, there was an ice cream truck going around through it and there was a group of 50 GI's milling around the ice cream truck.

I then went through some of the housing areas, drove past the stockade, saw some GI's doing drills and training along with—I guess it was a bayonet practice field with rubber tires mounted on steel frames with things coming out—I don't really know.

Then I found I got lost because it's a very complex roadway system in the base—at least it seemed so to me. I found myself going in and out of the base [101] without really having the intention of doing so. I wanted to just drive around in the base area, but I went out once in the Pemberton Road and once by an airfield, I think it was on Texas Road, where, as far as I could tell, there was no demarcation where you were on the base and where you were off.

Q Did you have a map of the base?

A No, I didn't have a map of the base until later when I got one. After I had driven around for a period of time and seen the advertisements for a rock concert and so on and a number of other things like visitors' parking facilities and visitors' information facilities, I then stopped at Route 68 or the Highway 68 entrance to the post and tried to keep count for 15 minutes of how many cars I could identify as being associated with the Army went in and out of the post during that period of time.

Q How did you make that determination, which ones were identified as Army?

A Obviously Army vehicles are vehicles that had stickers on the front or rear bumpers that were Army stickers, and I counted 53 in this space of 15 minutes that went in and out of the base on Highway 68.

Q 53 nonmilitary vehicles?

A Right. I don't know really whether or not they [102] could have been people visiting somebody on the base or not, although there were some that were obviously campers and seemed like people going through a vacation or some other businesses.

Q You mean the vehicles were?

A Right.

Q Did you find that most of the traffic was military or nonmilitary?

A No. Most of it was military.

Q Did you—go ahead. What was the rest of your trip?

A So then after that I went to the main information booth, which is right as you come in on Highway 68, and there was an M.P. on duty there, and I asked the M.P. if—I said I was a visitor in the area and just wanted to look around the base and was there any problem with that. And I also asked for a map of the base. And then I asked him if there were any problems with restricted areas on the base.

And upon the conclusion of that conversation, I felt quite sure that I was in no danger of violating regulations by visiting all areas of the base other than those specifically posted as restricted.

Q Okay. Do you have that map?

A Yes, I do.

[103] MR. KAIRYS: Can we mark that as Exhibit 10?

THE COURT: Any objection?

MR. HILL: I think that might be the small version of the map that we already submitted. No objection.

THE COURT: All right. Mark it.

THE CLERK: Marked P-10.

(Map received and marked as Exhibit P-19 in evidence.)

A At that point I left the base after having visited the information booth.

MR. KAIRYS: Thank you. Nothing further, your Honor.

THE COURT: Cross.

CROSS-EXAMINATION
BY MR. HILL:

Q Mr. Stapleton, did you read any of the newspapers at the PX newsstand to determine whether or not they contained any articles on Dr. Spock or any of the other plaintiffs in this case which are considered candidates for national political office?

A Well, I looked through a number of them and I'm familiar with the general editorial content of many of the papers.

Q I didn't say "general editorial content." [104] Did you determine whether there are any news articles on any of the candidates for national office that are plaintiffs in this election?

A No, I did not read every publication on the newsstand.

Q And you were looking primarily for editorial support?

A Well, no. I just looked at the publications. And some of them had front page material on the campaign. None of the material visual to me as I looked on the material on the shelves and flipped through the newspapers had any relation to Dr. Spock's Socialist Workers Party or anything at all out of the ordinary politically.

Q You don't know whether there were any articles about Dr. Spock; do you?

A No, I don't. No, I don't know that.

MR. HILL: No further questions, your Honor.

THE COURT: Anything else, Mr. Kairys?

MR. KAIRYS: Nothing.

THE COURT: Thank you, Mr. Stapleton.

THE WITNESS: Thank you.

(Witness excused.)

MR. KAIRYS: Fred Halstead, please.

[105] FRED W. HALSTEAD, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr. Halstead, you are here as a representative of the Socialist Workers Party?

A Yes.

Q You are a member of the national committee of that party?

A Yes.

Q And you were a candidate for President of the United States in 1968; isn't that right?

A Yes, in 1968.

Q Are you running for office right now in this coming election?

A Yes. I'm a candidate for United States Senator from Illinois on the Socialist Workers ticket.

Q All right. Why does the Socialist Workers Party want a campaign at Fort Dix?

A Because we want to reach constituents who are GI's. We want GI's to have a right to vote. They certainly have a right to consider the issues. We think we have a position on issues of particular importance to GI's, particularly on the war. I don't know anybody else who has a better right to have an opinion on the war, to [106] express that opinion and make an intelligent decision on it based on hearing all points of view. And we think that's very important.

Q Do you have the means to reach them any other way?

A It's very difficult. We don't get much radio and TV time. We don't have the money for it. We very rarely are reported in the major press. There are ar-

ticles every week in the Militant and articles occasionally in the underground press.

Our main way of reaching people in our campaigns is distributing leaflets, speaking to them personally, organizing meetings to which we invite them, going to the places where they are and speaking to them, like at campuses, in front of plant gates, passing out leaflets there.

Q Have you been on the base yourself?

A Yes.

Q When was that?

A In 1968 a friend of mine, and a member of the Socialist Workers Party, who is a supporter of my campaign, was being court martialed for allegedly putting up a political sticker somewhere on the base. And I went to attend that court martial. That's why I was there.

Q And what happened on that day?

[107] A Well, I attended the trial. During the course of the trial there was a recess. And I left the courtroom, as did other people in the courtroom, during the recess, and went across the street to a PX to get refreshment. I had a soft drink there, stood around in the PX and outside of it until the recess was over and went back to the trial.

The trial was very shortly after that over, fortunately, my friend was acquitted.

And then I went back across the street to the PX, in front of it, and I had on my possession a dozen or so campaign brochures which I thought I might just as well pass out on the scene. I started to distribute them to the GI's there in front of the PX. I got about two of them distributed when the M.P.'s took me by each arm and escorted me to the provost marshal's office—I didn't resist. They took me that way—where I was given a letter informing me that I—if I came back on the base, I might be subject to arrest. And then I was escorted off the base.

Q Were you approached by any M.P.'s or any authorities at all up until the time you handed out these papers?

A No.

Q Okay. If this Court should grant the [108] injunction that we've requested here today, what is the intent of the Socialist Workers Party with regard to the Fort Dix military base?

A I would like to go there to speak about our campaign to GI's and distribute our campaign literature, particularly before the election. We're on the ballot, as is the Peoples Party, in New Jersey. We were on the ballot in New Jersey in 1968 also, and there are a lot of young people in uniform at Fort Dix that we'd like to talk to about our campaign before the election.

Q Will you comply with reasonable regulations as to the time and the place of such address and such leafleting?

A Certainly.

Q And if regulations are made that you consider unreasonable, what would you do.

A Test it in court.

Q Now, have you spoken before many engagements on behalf of the Socialist Workers Party both in the course of your candidacy and after?

A Yes, hundreds of them.

Q Hundreds of them. How big have the audiences been?

A Well, they can vary from a half a dozen to 30,000. I've spoken before—

[109] Q Have they included military personnel at times?

A Yes, quite often.

Q And have you had any trouble—have any of your speaking engagements or those of the Socialist Workers Party resulted in riots?

A None. None whatever. I have never, when I was speaking as a candidate, ever had any physical disturbance at all occur at the meetings that I spoke before as a candidate. Nothing more than questions and normal heckling. Nothing physical.

MR. KAIRYS: Nothing further, your Honor.

THE COURT: I'm curious, Mr. Halstead. How would a political address at Fort Dix by you enhance your candidacy in Illinois?

THE WITNESS: I don't think I would be the one.

THE COURT: It's not going to control this case, but I'm curious.

THE WITNESS: I don't think I'd be the one speaking before Fort Dix. I'm only here because I was the Presidential candidate in 1968, and at this time—

THE COURT: I understood you to say that you might go back to hand out leaflets if [110] authorized by the Court.

THE WITNESS: Not me personally. Other members of the Party for other candidates.

MR. KAIRYS: He was speaking on behalf of the Socialist Workers Party.

THE COURT: I see.

MR. HILL: No questions, your Honor.

THE COURT: Thank you, Mr. Halstead.

(Witness excused.)

MR. KAIRYS: The last witness, your Honor. Donald Campbell.

DONALD ALBERT CAMPBELL, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q What is your rank?
A E-1.
Q E-1. Where are you stationed?
A Fort Dix.
Q Were you drafted or did you volunteer?
A I was drafted.
Q How long have you been at Fort Dix?
A Well, since the 31st of August.

Q What kind of leisure time could you and the [111] other men who are there training with you have during the training period?

A Well, during the eight and a half weeks basic, as you progress further into those eight and a half weeks, you get more and more leisure time. I myself, during the time I've been there—I'm not a very fast reader. I've read through about four and a half readable size books right now. Usually between the hours of 6:00 and 8:00 at night you have to yourself. Sometimes there is some things to do like polishing shoes or something like that. You pretty much at this time are to yourself. Not always. But quite often.

As you get further into those eight and a half weeks, you more and more often tend to have most of the weekends to yourself.

Q And what do you see the men doing during these periods? What are they doing?

A They just sit around quite often. On the weekends, when they have larger periods of time, if they can't get off the base, they usually go out into the field, something like that, buy some beer, just sit around and, you know, just try to keep themselves occupied for a whole day at a time, something like that.

Q Some of them read?

A Some of them read.

[112] Q Some of them watch television?

A Yes. There is a television in the barracks; and between 6:00 and 8;00 usually there is a considerable number of people down there or very often there is a considerable number of people down there watching it. And also on weekends.

Q Would you consider it any interference with your assigned duties to listen to a political candidate, a candidate for President of the United States, for one hour?

MR. HILL: Your Honor, I suggest this witness is incompetent to determine that question.

THE COURT: I'll allow it. Go ahead.

A No.

Q Now, have you been through an orientation briefing about the Fort during your training?

A Yes. We went through several orientations. I mean, we had—we were talked to by our own drill sergeant. We were talked to by the first sergeant of our company. We were talked to by some people of higher ranks—I can't remember what ranks they are, the higher ranks. You know, especially during the first week.

And especially during the first two weeks we had many, many orientations trying to tell us what things were happening, what was going on.

[113] Q All right. As a result of those talks and the advice that was given to you, what kinds of conduct have you kept away from?

A Well, one of the—well, there is several things they really stressed. One thing is not to go AWOL. That's one of their big points.

Another thing: to stay away from drugs. Those are probably the biggest two things that they push. Like during the first week, you usually hear both of those things about once a day or something like that from somebody.

Q What do you hear with regard to the openness or closedness of the base?

A Well, it was stated in some many words by our drill sergeant that it was—that it was an open fort. It was—it was stated by the first sergeant, too. They stated that usually, when they are giving talks on not going AWOL, they were telling how easy it would be to go AWOL. You know, they said you could just sort of walk off the post. You won't get stopped. Then they go on to tell you what will happen when you get back, if you come back and stuff like that. They paint a pretty grim picture of when you come back.

But it is stated definitely that it is an open fort.

[114] Q Did they tell you about any other consequences of it being an open base in terms of how you should behave at late hours or anything like that?

A Yeah. Another thing they tell us about, especially they re-emphasize this at the period when we get paid, is they tell you not to go out after dark by yourself,

to go at least with one other person. Especially at pay time they tell you this. They say because there is many, many people that just walk on the base, you know, many people from outside the fort that will, you know, mug you and roll you.

They say, you know, they don't know whether you have money until they've knocked you over the head with a pipe and, you know, by then it's kind of late even if you don't have the money. So, you know we are informed of that.

Q Anything about prostitution?

A Yes. Mainly they talk about Wrightstown, but in several instances they said that you, you know, you could find a prostitute on the base, especially after pay time they come up from both Philly and down from New York and also local people come in.

Q Have you looked through the literature made available in the PX and the other stores on the base?

A I haven't been to the main PX. I looked at the [145] PX which is near our company area, and I looked at the PX at the reception station.

Q What kind of literature?

A You mean the books or do you mean like the newspapers and stuff like that?

Q Newspapers, periodicals.

A Usually they are pretty much just—well, the newspapers are usually pretty much just local papers. I haven't seen a New York Times on sale, but there are things like Trenton papers or Philly papers usually.

Q Have you noticed anything that you recognized as endorsing or that you've read and seen endorsing anything other than the Democratic and Republican candidates for President and Vice President?

A No. Neither in the newspapers nor in any of the magazines at the PX. And I looked through several of the magazines in trying to find something to read. Haven't seen anything about any of the presidential candidates except for the major ones, the Democrats and Republicans.

MR. KAIRYS: Okay. Nothing further, your Honor.

CROSS-EXAMINATION
BY MR. HILL:

Q Mr. Campbell—excuse me. Private Campbell, [116] I guess, are you here pursuant to a subpoena that was issued today?

A (Nods head affirmatively.)

THE COURT: You must answer.

A Yes.

Q And who subpoenaed you?

A On behalf of the plaintiffs. Does that answer the question?

Q You were subpoenaed on behalf of the plaintiffs? Are you affiliated in any manner with any of the plaintiffs in this case?

A I know some of them. I've worked—I have done work for the Socialist Workers Party. I'm not a member of the Socialist Workers Party.

Q And you personally know a number of the candidates and a number of the plaintiffs in this case?

A A number of the plaintiffs. I have met. I don't know if they know me, but I know them by sight.

Q And you are currently a recruit; is that correct?

A Yes.

THE COURT: Are you through with basic?

THE WITNESS: No. I'm not through with basic.

THE COURT: Basic trainee.

Q You were restricted to base for the first [117] four weeks of training; isn't that true?

A Let's see. Well, I'm not sure on that. Yes, I believe that's true. Well, I believe that's true. If you mean as a general policy. If you mean whether I personally was or not, I was given a pass last weekend.

Q Last weekend. You weren't under any personal restriction, but your training unit is. Is that what you mean, for the first month or so?

A Yes. Roughly the first month. The first four weekends. I'm not sure whether it was the first four weekends or the first three weekends. People should be getting passes this weekend, so I mean—I guess you could count up the weekends if you want.

MR. HILL: That's all, Private.

MR. KAIRYS: Okay.

THE COURT: Thank you, sir. Stand down.

(Witness excused.)

MR. KAIRYS: That's the conclusion of our case, your Honor. I just move admission of all our exhibits.

THE COURT: I think they have been marked.

THE CLERK: Yes.

MR. KAIRYS: Okay.

THE COURT: Do you have any testimony?

MR. HILL: Your Honor, at this point we [118] could make several motions, but perhaps we can reserve with your permission for final argument in this case. We do have no witnesses.

THE COURT: You have none?

MR. HILL: We have no witnesses.

THE COURT: We'll take a ten-minute recess and you'll each have twenty minutes.

MR. HILL: Fine. Thank you.

(Recess)

[119] MR. KAIRYS: Your Honor, we filed a memorandum of law, so I won't repeat, but I would just like to summarize some of the basic concepts applicable under the First Amendment. We have traced how those concepts naturally and logically follow to the conclusion in the Flower decision of the Supreme Court and the Jenness case in the District of Rhode Island.

Any restraint on speech is presumptively invalid. That comes down to be most recently affirmed by Chief Justice Berger in the Keefe case where he rejected the rational basis test for judging deprivation of First Amendment rights. Where there is a flat and absolute ban on speech the presumption is just about irrebutable, again the Keefe case is an authority for that. The government must show a compelling state interest and they must show that they have chosen the least drastic means, the means which least imposes or infringes on First Amendment rights.

Now, all of this is suggested to your Honor and decided, certainly, by the Supreme Court with the knowledge that the military, just like the officials of any city, will have the authority to regulate reasonably the time, place and manner of exercising First Amendment rights, and we don't contest [120] that in the least. The point is—and this is formally documented in the brief—there is no such compelling interest. There is no legitimate reason, from the testimony you have before you today—and there certainly is no basis for allowing some forms of speech but not allowing political forms of speech, and by allowing or disallowing certain political forms of speech—and you have direct testimony on that. This record, I believe, is unprecedented in any of the cases in terms of discrimination based upon the political nature of the speech. It is very clear that you can do anything you want at the Base unless you exercise First Amendment rights. You can be there—like the chicken, just to get to the other side, the chicken who crosses the road. You can be there just to look around. You can be there just to be there, but if you are there and you exercise First Amendment rights, like handing out a leaflet, trying to address an assembly, then you are in violation of their regulations, they say, and they prohibit you from the Base, but they allow a rock concert of 5,000 people with loud music and dancing.

Can it be said that an address by a presidential candidate could be more disruptive or interfere more [121] with the military mission than a rock concert? I don't think it can, and I don't think political speeches would draw 5,000 people.

THE COURT: One of the witnesses here—and I just don't recall offhand who it was—stated flat out—I guess it was the first witness.

MR. KAIRYS: Colonel Johnson.

THE COURT: Colonel Johnson, yes. He said that very candidly, that any political campaign or otherwise which was anti-war was inimical to their mission.

MR. KAIRYS: Right. That is discriminating against speech based upon its content. They are picking a particular political view that the war in Vietnam is wrong

and saying, "That you can't express." That is what I meant when I said it was unprecedented in terms of coming from their own mouths. They indicated that an anti-war viewpoint can't be heard on that Base but others can.

THE COURT: Like what? They said they kept all political parties out.

MR. KAIRYS: None of the others have requested, as far as I know.

THE COURT: Does that matter?

MR. KAIRYS: They have not kept them out. Look [122] at the GI Times—the Army Times.

THE COURT: Those advertisements for a political party?

MR. KAIRYS: The Nixon platform is heard on that Base.

THE COURT: Say, for instance, if your clients had advertised in the New York Times—and I know the rates are very high—if they had advertised it would certainly appear at Fort Dix, wouldn't it?

MR. KAIRYS: Right. That is correct, but they have neither the means nor is that their style, really.

THE COURT: If I were running for President I wouldn't have the means to do it, either, and, believe me, I have no aspirations.

MR. KAIRYS: I would hope that they would let you in to the Base to be heard.

I would like to go through some of the matters raised by the defendants in their brief. First of all, this matter of irreparable injury. There can be no doubt that there is this irreparable injury as to all of these plaintiffs. Deprivations of First Amendment rights per se are irreparable injury.

THE COURT: That is really the problem, isn't it?

MR. KAIRYS: What?

[123] THE COURT: Whether or not the entire Base was at least a somewhat restricted area for military purposes, using the Flower incident as a criterion, and, secondly, whether they have been deprived of their First Amendment rights in view of what they allege to be a pressing need to keep an Army Base free—

MR. KAIRYS: On these facts this Army Base is more inundated with various forms of speech, including rock concerts.

THE COURT: A rock concert is not political.

MR. KAIRYS: No, but I say forms of speech. This record is far more full than the Flower record in terms of openness. All you had there was the number of cars coming in and out, which I don't know how to compare with this number. It's not clear whether it is more or less, and I don't think First Amendment rights depend upon the number of cars per day that go through, or you can take a certain cut-off point. You had that fact. You had the fact that people were allowed to walk on the Base and allowed to ride on the Base, as they are here, but in addition you have the Base holding rock concerts here. You have evidence of highly political partisan information being distributed on the Base. You have evidence of pamphlets being handed [124] out. They say "No," when it's a pamphlet. If the pamphlet were in favor of President Nixon do we know whether they would permit it to be handed out or not?

THE COURT: I would assume from the position that they have taken that, of course, they would ban it. I think the only leaflets—see if I am not right—the only leaflets were some distributed by children going around with notices of officers' wives having teas or something.

MR. KAIRYS: That is right.

THE COURT: And a weekly bulletin of activities on the Base.

MR. KAIRYS: That is right, but if they are going to allow various kinds of speech, various kinds of pamphleteering they can't stop that speech which is political. That is a thing that the First Amendment won't allow, and that is what this whole line of cases that leads up to Flower is about, I think.

Now, I would like to just address myself to a few of the matters raised in the brief of the defendants. They cite the Cafeteria Workers case. I should say that they mis-cite the Cafeteria Workers case. That was a

closed Base doing wholly classified work, and [125] the appellant in that case was an employee. There was no question of First Amendment rights. It was whether you could fire the employee without giving a hearing. It has absolutely no application.

They cite Adderley v. Florida, which was a demonstration attempted in a jail. The Court again distinguished places open to the public where people have a right to be, and they distinguish Edwards v. South Carolina that involved that fact situation. They said "No, this is a jail. The State has a compelling State interest in the security of a jail."

Similarly, Cox v. Louisiana, the compelling State interest was within the power of the courts.

Now, on Flower, this is a case that is on all fours with this case here. I get out of their brief four comments about Flower. First, we are told that it is a short per curiam decision so you should disregard it. It is a per curiam decision I presume for the simple reason that the decision, the result is obvious, and I think that the history of the First Amendment violation in this situation makes that result absolutely obvious. There were six Judges that put their names behind it and I don't think it is appropriate for this Court to try to figure out why it was per curiam, and I don't anticipate that [126] your Honor will. The idea that it should be disregarded because it is per curiam—if anything it's the other way around—usually a case obvious on its merits is decided per curiam.

THE COURT: I want to give you your full time but I want you to concentrate, if you will, on what is bothering me. In Flower the Court said—they just about waived any jurisdiction or restriction over that arterial highway. Isn't that what the Court said?

MR. KAIRYS: They didn't get in court and say "We waive it."

THE COURT: But by what happened there.

MR. KAIRYS: By those facts, with traffic going in and out, people walking, people having a right to be there. That's all.

THE COURT: Any restriction at all on the use of the street.

MR. KAIRYS: That is right.

THE COURT: They take the position that they have none here, haven't they?

MR. KAIRYS: Have not what?

THE COURT: If you want to use the word "waived" the rights over any street.

MR. KAIRYS: They took that position in Flower, [127] also, but the facts showed that the streets were open, as here. People could walk on them, as here. There is further evidence of all kinds of people visiting, and other kinds of speech in this case. There is also further evidence that they are basing their exclusion of speech on discrimination, both discrimination against all political speech and a certain content of political speech.

THE COURT: Didn't Colonel Johnson make quite clear—it would seem obvious to me that when they book such things as dance groups, music groups, and things of that nature—I am talking now about people up in training and administration lectures, that they are actually helping fulfill their mission, for instance a concert is obviously designed to help the morale of the men which is in accord with their mission. That is what they argued in Flower.

MR. KAIRYS: Perhaps the best way to get to the point is to go to the Circuit Court decision in Flower because it decided the affirmative of the point. As a matter of fact, the government's brief comes right out of that opinion. It cites all the same cases. It runs just right down the line exactly where the majority opinion did, except for Judge Simmons, and, of course, the Supreme Court reversed that majority [128] opinion and upheld Judge Simmons.

The 5th Circuit—this is the majority opinion held the Commander can summarily exclude anyone. That is what they ruled, and the authority for that was Cafeteria Workers, the case I just went over.

Second, that Fort Sam Houston is not open. It is a matter of license. They let you on when they want to

let you on. That is what the 5th Circuit ruled. That was reversed.

Thirdly, that the analogy offered by Flower—and I quote "between various public places and a military base is not in step with reality." That was reversed, also, and they said, finally, that there is no time for this on the basis of the interruption with the military mission, and that was reversed by the Supreme Court.

In other words, every one of those arguments that is being made here today was made there, and they were upheld by the 5th Circuit and reversed by the Supreme Court.

Now, if I can finish some of these points that I really feel are necessary to—unless you have any further questions on that—I would go along.

THE COURT: No. That's all right.

[129] MR. KAIRYS: At one point the government suggested that campaigning should not be the valid subject of a preliminary injunction because unlike leafletting, which is involved with Flower, it is more disruptive.

Well, I guess I take that that you should have a right to leaflet, and I firmly agree that the facts as to the four non-candidate claimants are really exactly like Flower, exactly, except they are now testing it by affirmative action rather than violating the Bar notice and being prosecuted criminally.

The government goes on to say that political rallies are by their nature disruptive, and I will quote, "A political rally by a national Presidential candidate would be a flop if it didn't interfere or disrupt." I don't know where that comes from or whether the candidates would take very kindly to that, the ones involved in this case or the other candidates. That is obviously not true. There are political rallies all over the place, especially these days, and they are not disruptive, and they don't interfere when they are scheduled at an appropriate time and place.

Then the government cites Lloyd v. Tanner, a [130] recent decision of the Supreme Court, saying that a shopping center may bar First Amendment activities,

and what they do is reverse the whole history and meaning of the First Amendment and turn it around in a way that I don't understand. It has always been the law that private property is not subject to the First Amendment. The First Amendment only bars the government from abridging rights. It doesn't bar private people or private institutions. That has been the whole historical development of the First Amendment.

All they did was enlarge the area of what they call private by including the center. That doesn't mean that what happened on things that are definitely not private but owned by the government is any different. It has really no effect in this case.

Now, there is this problem that if soldiers were to watch the address of a Presidential candidate, we are told, they would be violating military law, and that is the law that the government cites against participating in partisan politics. It is quite obvious that watching a candidate, just like watching President Nixon on television is not participating in partisan conduct and it is not a violation of military regulations. The very regulation they cite and provide [131] to your Honor and me in Appendix 3 says that these rules shall be interpreted as rules of reason and common sense shall apply. They also indicate in Paragraph 5-29 that military personnel are expected and encouraged to carry out their obligations as citizens and encouraged to vote.

Now, another argument that the government makes is that they might appear to be showing favoritism if they were to allow one of the plaintiff candidates on the Base, and I think that simply is clearly barred. No one could accuse them of favoritism any more than I agree with the Colonel's statement that the fact that that ad is in the paper doesn't show favoritism. It shows just they are allowing partisan political debate to go on in the Base.

Another allegation by the government is that since the claimant candidates are not from the major parties it really doesn't matter what right they have or what happens to them because they can't win, anyway, and

we have referred your Honor to Williams v. Resto, which laid that to rest very firmly.

As to the non-candidates we are told that the complaints are stale. They have waited too long. [132] They have bar notices which are in effect. Now they cannot go on to the Base, any of them, and they are subject to a six-month penalty as Flower got.

Then we are told that they should submit their material in advance. Now, that, first of all, was decided long ago in Lovell v. Griffin. The government may not scan in advance materials that are subject to First Amendment rights and judge them as to their content. That is what I was getting at in that whole line of questions about contents, and Flower decided that right on all fours.

Flower went on the first time. He didn't get authorization for what he distributed. He was picked up and given a bar notice. Then he went on again. Again he didn't get authorization and was convicted of a crime, for violating the bar notice.

The Supreme Court said that his activities were Constitutionally protected, that he had no obligation to get authorizations in the beginning or to submit his material. To the contrary, he did not, and what he did was Constitutionally protected.

I think I should be very clear that Flower was a leaflet distributor exactly like the four non-candidate plaintiffs.

THE COURT: Wasn't that advertising—I read [133] it three days ago—wasn't that advertising some sort of a function?

MR. KAIRYS: An anti-war function.

THE COURT: At another place, not on the Base.

MR. KAIRYS: So were these. Plaintiff Hardy announced a local demonstration outside of the Fort, McGuire, not in the McGuire Air Force Base, and the other ones that talked about demonstrations all talked about local demonstrations outside the Base.

THE COURT: But Dr. Spock wanted to come on the Base.

MR. KAIRYS: That's right, but he was not going to bring a rock group. He just wanted to come and talk to people.

Now, the government suggests some kind of a ruling as to Flower, as to what it is and what it is not. They said there must be extensive use by the public. Now, I don't know. I don't know how that applies. I don't think that that is the actual standard in Flower. I will get to what I think that Flower is in a second, but there is certainly as extensive use as in the Flower record. I think much more. It is hard to gauge what the 66,000 means. We have the statement by Mr. Stapleton who sat there for fifteen minutes and watched the cars that there [134] seemed to be more civilian than military. That is unrebutted by the government. We really don't know exactly where in that 66,000 the cut-off is, but 66,000 cars a day is a lot of travel on that highway. We have got a lot of testimony from all of the witnesses, the officers, as well as our civilians and military witnesses that there are civilians all over that Base, that they go all over the Base. There are a few areas they can't go, and they don't go. I find that extensive, but I think the more important point is that Flower I don't think sets out any kind of vague standard like that which it would be impossible, I think, your Honor to apply.

I think what Flower says "open" means that it is open in the sense that you have the right to be there for other purposes, and if you have the right to be there for other purposes they can't take away your right to be there for First Amendment purposes, and I'd like to quote two passages from the Flower decision. Two passages in that decision is almost the whole decision.

"The Fort Commander chose not to exclude the public from the street where petitioner was attending," and "One who is rightfully on a street which the State [135] has left open to the public carries with him there as elsewhere the Constitutional right to express his views in an orderly fashion."

They are talking about the right to be there, certainly. All of those plaintiffs had the right to be there,

have the right to go on there. Certainly even under the government's standard the use by the public of this Base is certainly extensive.

Again, I think it is far more open than the record revealed in Flower, and I think we have the addition of things like 5,000 persons at a rock concert, like people dancing. We have the point of discrimination that was actually shown. Usually it is the possibility of that kind of discrimination against political speech that has been the subject of victories in this kind of suit.

I would like, your Honor, if you would, just a brief opportunity, if you think it is appropriate, to reply to the government.

Thank you.

THE COURT: All right. Mr. Hill?

[136] MR. HILL: May it please the Court, we are dealing here today with a claim of First Amendment rights, and the government would be the first one to agree that in our society any such claim has got to be given the most serious consideration. And we are not here today saying that your Honor should shrug this claim off. We do think, however, that in addressing yourself to the problems that have been presented by this case, that there are other values in this case equally important to our society that you must keep in mind.

One of these values, at the outset, that I want to suggest to your Honor that you should keep in mind is maintaining the military as an institution that is not identified in any manner with politics or any political party.

Secondly, I suggest to you that society has a substantial interest in seeing that the military is permitted to fulfill its mission in this society, and that it not be interfered with in carrying out its mission.

I further suggest to your Honor that we would not be in court today but for the decision in the Flower case, decided by the Supreme Court on June 12th of this year. In fact, many of the witnesses [137] who testified on behalf of the plaintiffs indicated that they initiated their activity in direct reliance on the Flower case.

I have argued in my brief, and the government repeats here, that until the Flower case was decided it was unmistakably clear that a military Commander could summarily exclude civilian workers—not civilian workers, but civilians generally—from areas under his command. And I suggest in the Cafeteria Workers case the Supreme Court in that case gave a very careful history demonstrating the rights, the traditional rights of military Commanders to exclude civilians from their Posts.

We have also argued, however, that the right of a military Commander to exclude civilians from the Post is a right in line with other decisions of the Supreme Court, namely, the Adderley case and the Cox case, again referred to extensively in our brief, which indicate to us that when you have public property which is given some particular purpose and to which the public is not generally permitted, that this public property is treated as private property under those circumstances, that is, when they have a particular function which does not involve the general public. And I suggest to [138] you, that being the case, that those decisions are applicable to you today, and that's the relevance of the Lloyd v. Tanner case, which I will refer to a little later.

Turning briefly to the Flower case, we haven't argued that your Honor ignore the Flower case. We have argued to you that you must seriously consider the circumstances under which the Supreme Court decided that case. One of the difficulties with the Flower case, I can suggest to you, is mentioned by the attorney for the plaintiffs. He suggested to your Honor that your Honor is being presented with an unprecedented record, that is, of the facts surrounding civilian access to Fort Dix and surrounding the functions at Fort Dix.

The Supreme Court was not blessed with that kind of record in the Flower case. So for that reason, for the reasons that I argued in my brief, I obviously am not telling you to ignore the Flower case but I am saying "Look at it real carefully and see whether in your mind you read Flower as breaking new ground or whether you read it as consistent with the line of cases

that I referred you to: Cafeteria Workers, Adderley, Cox, Lloyd v. Tanner."

In examining the Flower decision and in compar- [139] ing the facts at Fort Sam Houston with the facts at Fort Dix, it seems to me that there are two comparisons that must be made. One, we have to compare the activity, that is, leafletting versus political campaigning.

Then I think we have to go a step beyond that. We have to compare what we know about Fort Sam Houston as revealed to us by the Circuit Court in the 5th Circuit and by the Supreme Court and the information that has been disclosed to you today as to what occurs at Fort Dix.

I think that comparison will demonstrate that political campaigning is a substantially different activity than distributing a rather innocuous leaflet that advertised a debate on a nearby campus where there would be both individuals present and a political campaign. Those are two different things.

First, I think that these are the factors that you have got to consider in Flower: Flower was quietly distributing innocuous leaflets. He was on foot. He was by himself. There was no disturbance whatsoever. There was no obstruction. He was on a sidewalk, which is a major thoroughfare in the City of San Antonio, Texas. It was a major arterial road that transported municipal traffic from one part of [140] San Antonio to another part of San Antonio, traffic by civilians as a thoroughfare twenty-four hours a day, traffic by all sorts of civilian vehicles having no basis or no reason to be on Fort Sam Houston twenty-four hours a day. There was no bound in Flower that he was distributing things. I think it is fair to say that the street at Fort Sam Houston was inundated by the public.

Okay. So we have the quiet leafleteer on the busy municipal street. Dr. Spock would like to campaign. The testimony has been that Dr. Spock, although he personally arrived with a party of three to six—

THE COURT: Three Secret Service men.

MR. HILL: Plus a couple of aides, I believe.

(Continuing)—but there were fifty to sixty people waiting at the outskirts to greet him carrying a banner.

I suggest to you that this is the nature of campaigning, that when you have a political candidate, he wants to go to the people. The people naturally tend to come to him. There is a commotion. It is disruptive—not disruptive in the sense that it is riotous, but disruptive in that it interferes with normal business activity, disruptive in that it attracts the attention of people who are supposed to be [141] carrying out their duty, disruptive in the sense that large numbers of people do gather; and I really suggest that Dr. Spock would be less than candid if he suggested that he didn't want to attract large numbers of people when he campaigned, and that he would be very disappointed if in fact he didn't attract a lot of people. I say this not—

THE COURT: Having campaigned myself, I know that your statement is perfectly valid. They like to see as many people as they can possibly get.

MR. HILL: This is not Dr. Spock. This is every politician.

THE COURT: Every—

MR. HILL: Whether it be President Nixon, George McGovern or candidates for Congress.

THE COURT: I can assure you that there is nothing more discouraging than walking into a hall and seeing about eleven people. It's like John the Baptist crying in the wilderness.

MR. HILL: So that is the context which I argue inherently is disruptive. Okay.

Now, let's compare—

THE COURT: Let me ask you this: Isn't there some testimony here about Route 68, whether it was a County or State road? It didn't come clear to me. [142] It goes right through the Fort.

MR. HILL: Your Honor, I think that I can fairly represent to the Court that at the time that Fort Dix was acquired that the State retained on behalf of the public—and I believe that this is in the affidavit of Colonel Olsen—a right of way for the public to traverse the Fort; and in that connection part of Route 68 does enter the Fort property, and there is one, or possibly two,

County roads that either go through or border the Fort property.

THE COURT: Isn't that the same thing as that business down at Fort Sam Houston?

MR. HILL: I don't think so. I don't think the fact that we have got an unknown quantity of—

THE COURT: Granted, though, that I don't place any activity on Route 68 from the testimony I have here. In other words, people handing out leaflets. There is no such testimony that they were handing it out on Route 68.

MR. HILL: And, in fact, it would not be possible to hand out leaflets on these County roads because there aren't sidewalks. I believe the testimony from Colonel Olsen was that there were very few sidewalks on the Post, that there were no arterial kinds of sidewalks, and I would suggest [143] that Route 68 does not have a sidewalk there.

THE COURT: Keep in mind that it is hard for me to visualize this. Of course, I haven't really studied that map the way I should, but it is hard for me to visualize just what was there.

MR. HILL: So, yes, we have got to concede that there is some civilian traffic that undoubtedly does traverse the Post using these County rights of way. But there are a couple of other factors that have got to be considered along with that.

First of all, the State of New Jersey has specifically given to the Federal Government the right to police those roads. And, in fact, the Federal Government asserts those rights. There has been abundant testimony with respect to the issuance of traffic summonses for traffic on these roads; the fact that they are not heard by a local judge, a local magistrate, the fact that the arrests are not made by municipal police, State Police; that in fact they are made by the Military Police. And they are heard, I understand, or generally by a Magistrate Rudd.

You also have the testimony that the MP's periodically will block those roads and inspect the vehicles that come through, at least with respect [144] to whether or not

they have decals, inquire as to their business. So I think if Flower—I think they say at Fort Sam Houston there was an abandonment or activity was permitted such as we must conclude that there was an abandonment. I suggest that when we have vigorous Military Police patrolling of all the roads, I don't think that you can say that there is an abandonment. When the Federal Government retains exclusive jurisdiction, and in fact enforces the jurisdiction that it has, I don't think you can say that there is an abandonment under those circumstances.

I would also, your Honor, like to specifically reiterate or reaffirm some of the testimony of both Colonels, Johnson and Olsen, regarding some of the other restrictions. We know, for instance, that peddlers who want to distribute goods, may not do so unless they are licensed by the Post. We know that sentries are posted when we're in time of specific need, such as when, you know, when they know demonstrations are going to be present, when they feel they would be an interference with the military mission. And I don't think you can forget that Fort Dix is located in a very rural area, and because of that the need for sentries, guarded [145] gates, is just not there. Its remoteness helps with some of the security problem. I think that that is a very critical factor in this case.

When you talk about other access, the testimony clearly was that at Fort Dix entertainment only is only brought on to the Base by express invitation, and it is brought on to the Base because it helps the military to perform its mission by giving the soldiers a little recreation, by trying to increase their morale. I think this is—for all times this sort of thing has been considered well within the military mission.

The other speakers that were mentioned only came on the Base by invitation and the prior testimony was that they were only brought on the Base when it felt that their efforts, either in management conferences or at the local chapel, would aid the military mission.

Now, you know, when we look at Fort Sam Houston, we know, your Honor, none of these facts about that case.

What we do know is that we had a—First of all, Fort Sam Houston was not limited—there was no discussion whatsoever about the entire Fort. The discussion was limited to this one major thoroughfare, major municipal thoroughfare that had a sidewalk that [146] was used by the people. We had the distribution right on the sidewalk. The sidewalk was used around the clock. We know we were in the middle of a busy city at this point, and it was just municipal traffic cutting through the Base. I really think that there is an inference there that the Court must consider.

Now, I've argued to you previously that when you consider the Flower case that you also have to consider the Flower case in the context of Lloyd v. Tanner. As you will recall, Lloyd v. Tanner involved a local shopping area, privately owned albeit, but expressly opened to the general public. The general public was encouraged to tour the mall area, to come for every purpose except to distribute leaflets. And the Court there said that this being private property, they had to say "No leaflets." But the Court also in its opinion in Lloyd v. Tanner, referring to Adderley and Cox, said that even in many or a number of situations public property is treated like private property. So that just goes back to my initial point, that when you look at Flower I think you'll have to confine it very carefully to the facts in that case.

Now, what is it that the military is trying to [147] protect? Obviously, we have a military mission at Fort Dix, and we want to make sure that that military mission is protected. Plaintiffs, I think, have admitted in fact that there is a military mission that must be protected and they keep reiterating that they would abide by reasonable regulations as to time, manner and place. I think that that concedes that there is a military function on the Base that's got to be protected.

I point out initially that it seems to me it puts the military in a very difficult position if this Court were to take it upon itself to divide up the Base and to say, "Well, here you can do this and here you can't do that." Fort Dix is so big and sprawling, I suggest that that's

very difficult, if not impossible for a Court to do. So you have got to consider the overall mission of the Post, as pointed out in the affidavit of Colonel French, to which Affidavit there has been no rebuttal, by way of affidavit or rebuttal testimony. We know that Fort Dix is a training camp for basic—for recruits. We know that recruits are given a very highly intensified eight and a half week training course. We know that they are on a tight schedule. We know that the demands on their physical energy are rough. We know [148] that they are restricted to post the first four weeks for a reason, really, to insure that they become adjusted to, right at the outset, to military discipline, military training. I suggest that political campaigning on a base would necessarily interfere with the reasons which keep many recruits restricted to the Post.

Then I also think it is very important for your Honor to recall what I think was extremely candid testimony by Colonel Johnson. Colonel Johnson came out and told your Honor repeatedly that the military is trying, as an institution, to stay completely out of the political arena. They want nothing to do with it whatsoever. They don't even want a hint or suggestion that they are involved in political processes.

And this is, as you well know, historically the policy of this government, that politics and civilians and military simply don't mix.

I would like in that connection to read to you just briefly from Army Regulation 360-61 which talks about Army participation: "Army participation and cooperation is not authorized when such participation may directly or indirectly endorse or selectively benefit or favor or appear to endorse [149] or selectively benefit or favor a private individual, group, corporation, whether for profit or non-profit, sect, fraternal organization, quasi-religious or ideological movement, political group or commercial venture or be associated with solicitation of votes in a political election."

THE COURT: Mr. Kairys says you do by allowing political advertising in groups.

MR. HILL: Your Honor, I think it is very innocuous. I don't think that the public would ever associate the military with a political candidate to the extent that it lets in reading matter.

THE COURT: Of course, the answer to that is nothing is prohibiting that particular party or candidate from doing the same thing.

MR. HILL: That's right.

THE COURT: I suppose. Go ahead. You've got about three or four more minutes.

MR. HILL: Right. I want to make a clear distinction for you, which was made in the brief, between Dr. Spock and the plaintiffs who are not candidates for political office. We have four leafleteers that are also plaintiffs. I strongly suggest to you that the laws regarding these plaintiffs, the pamphleteers, are different from those concerning Dr. [150] Spock, that there are different circumstances surrounding each of these pamphleteers.

THE COURT: That's obvious; isn't it?

MR. HILL: Right. And for that reason at some point in the case we ought to sever this case and deal with each separately. That's Point No. 1.

In Point No. 2 there are two very recent decisions which I have referred to in our brief specifically upholding the regulations which I have cited to you in my brief requiring people who wish to distribute pamphlets to submit them to the Adjutant General in advance to determine whether they should be distributed. The major case was the Schneider case. In the Schneider case it turns out it was dissemination of the pamphlets that was denied. Cert. was denied in the Schneider case just after the Supreme Court decision in the Flower case.

So I suggest to you that if the Supreme Court thought that the Flower case was determinative of the Schneider-type situation, that is, the requirement that there be submission to the Adjutant General in advance, cert. would not have been denied in that case; and that leads you to as: What does Flower mean? I think we ought to consider Flower in its [151] criminal context, and in a criminal context no purpose would have been served.

You couldn't have done anything subsequent to the court or prior to the court date submitting something to the Adjutant General. I mean, once the arrest was made, that was it.

I have set out for you in my brief the criteria for a preliminary injuction. I think there is substantial doubt as to what Flower means. I do not think that Flower permits Dr. Spock to campaign or any other candidate to campaign. Consequently, I suggest that there is no proof that there will be a probability of success.

I think that I demonstrated to you that the public has an interest in not having the military associated with politics, which gives you a counter-balancing equity.

On the other point I've made my points in my brief and I'll rely on those.

I wish to make to you one other argument that was not advanced in the brief and which I can in the near future submit to you a memorandum on. I suggest to you that there is no jurisdiction in this Court to consider these cases to the extent that we are dealing with the claim that jurisdiction [152] lies under the Federal Question Statute, that is, Section 1331. I think the Goldsmith line of cases applies. In Goldsmith there was an effort to have the District Court adjudicate a person's right to disseminate leaflets. The District Court said you do not place a dollar figure on the right to distribute leaflets; and, consequently, you can't satisfy the $10,000 jurisdictional amount required. That's Goldsmith v. Sutherland, 426 F. 2d 1395.

THE COURT: Which Circuit?

MR. HILL: The 6th Circuit, 1972.

THE COURT: All right.

MR. HILL: Okay? I'd also suggest to you that there is no jurisdiction under the Administrative Procedure Act as alleged in the complaint inasmuch as we're dealing with what is clearly a discretionary function on the part of the Commander. I suggest that you read Section 1343, which the plaintiffs also assert as a jurisdictional ground, and that the statute clearly does not apply to this situation where there has been no denial of the right to vote whatsoever.

I would ask, therefore, that the case as to the leafleteers be dismissed for failure to submit a claim—the pamphlets to the Adjutant General, and [153] that both complaints as to the national candidates and as to the leafleteers be dismissed on jurisdictional grounds, and, in any event, I don't feel that any of the plaintiffs have stated facts that relief should be granted, upon the reasons which I have argued.

Thank you.

THE COURT: Five minutes, Mr. Kairys.

MR. KAIRYS: Okay. I will be very brief.

First, your Honor, the government comes back to this point that political rallies are inherently disruptive. Well, it's very clear that disruption is not—

THE COURT: It can be, but generally are not. I mean, I understand that.

MR. KAIRYS: Okay. But it's very clear that disruption is not the problem here. They will tolerate disruption on this military base for certain purposes. They will tolerate it for a rock concert, which is eminently more disruptive than any political rally can be.

THE COURT: I don't know how it is disruptive except for the eardrums. Why anybody likes it, I don't know.

MR. KAIRYS: Okay. Secondly, your Honor, it [154] seems to me they conceded to the candidate plaintiffs and they are indistinguishable from Flower. He called Flower a quiet, innocuous leafleteer. Well, that's the evidence as to all four of the leafleteers here.

Thirdly, the Jenness suit in Rhode Island was filed before the decision in Flower and with very good cause, based on the First Amendment law that I extensively cited to your Honor. It did not depend on Flower. It is not the situation that people are just starting a suit like this because of the Flower decision, that that was any new lease in the law. As a matter of fact, that Court is now reconsidering its opinion upon the application of the plaintiffs in that it did not go far enough concerning the interperimeter area. There is a petition for consideration right now pending in that court.

Fourthly, your Honor, the exclusion of Dr. Spock occurred on the Wrightstown-Pemberton Road just outside of Wrightstown about ten feet from a store in Wrightstown. That's where the Base begins and that's a County road. That happened right on one of the State's roads.

Finally, your Honor, all of these things, everything the government has raised, was considered in Flower. I think it's clear as to the leafleteers. [155] It's clear as to Presidential candidates, First Amendment rights, voting context, election context are certainly as stringent as they are for a leafleteer. We always have the caveat as to any of these claims that we make that they can regulate the time and the place and the manner of exercising First Amendment rights. We don't challenge that at all.

And I just suggest, finally, your Honor, that one of the things going on in Flower, and one of the things that you might consider, is that it's also part of the military mission to uphold the Constitution of the United States.

Thank you.

THE COURT: I will reserve decision, gentlemen.

Could I see you in chambers about that, just about that very point I want to talk to you, in case you want to give something else to me. We are going into a holiday weekend and I know you are in a rush.

MR. KAIRYS: Sure.

THE COURT: All right, I will talk to you.

(Hearing adjourned.)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed October 13, 1972]
[Title Omitted in Printing]

ORDER

This matter being opened to the Court by Kairys & Rudovsky, attorneys for the plaintiffs, David Kairys, Esquire appearing, in the presence of Herbert J. Stern, United States Attorney for the District of New Jersey, attorney for the defendants, Richard W. Hill, Assistant United States Attorney appearing, upon application for a preliminary injunction enjoining defendants, their agents and employees from interfering in any way with plaintiffs' exercise of their alleged constitutional right to conduct political campaigning and to distribute pamphlets on the Fort Dix military reservation and directing defendants to permit such campaigning and distribution of pamphlets subject to reasonable regulation by defendants as to time, manner and place, and the Court having considered the facts stipulated by the parties, the affidavits submitted by the parties, the testimony and documents received into evidence at the hearing held on October 4, 1972 and the argument of counsel, and for good cause:

It is, on this 13th day of October, 1972

ORDERED that plaintiffs' application for a preliminary injunction be and hereby is denied for the reasons set forth in the opinion of this Court filed in this matter on October 12, 1972, which opinion constitutes the findings of fact and conclusions of law required by Rule 52, Federal Rules of Civil Procedure.

/s/ Clarkson S. Fisher
CLARKSON S. FISHER
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 72-1934

BENJAMIN SPOCK; JULIUS HOBSON; LINDA JENNESS; ANDREW PULLEY; SOCIALIST WORKERS PARTY; JOHN GINAVIN; DONALD MISCH; ALAN HARDY and ROBERT STANTON, APPELLANTS

vs.

BERT A. DAVID, Commander,
Fort Dix Military Reservation,
MELVIN LAIRD, Secretary of Defense

(D. C. Civil Action No. 1621-72)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: GIBBONS and ROSEN, Circuit Judges
and LAYTON, District Judge

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted under Third Circuit Rule 12 (6).

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed October 12, 1972, be, and the same is hereby reversed and the cause remanded for the entry of a preliminary injunction directing the defendants to cease from interfering with the political campaigning by the candidate plaintiffs Spock, Hobson, Jenness and Pulley or with the distribution of campaign literature on their behalf within the unrestricted areas of the Fort Dix Military Reservation between the date hereof and November 7, 1972. The order may provide that the right

of the candidates to campaign and the distribution of campaign literature shall be subject to such restrictions as to time, place and numbers of persons involved, as shall have been shown by the defendants to be necessary to prevent interference with the military functions of the base, and the flow of military and civilian traffic, but shall not provide for the prior approval by any authority of the contents of any communication. The cause should be set down for a final hearing promptly to dispose of the claims of the candidate plaintiffs for injunctive relief after November 7, 1972, and of the claims for injunctive relief of the barred pamphleteer plaintiffs, all in accordance with the opinion of this Court. Costs taxed in favor of appellants.

ATTEST:

/s/ Thomas F. Quinn
Clerk

Dated: October 27, 1972

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed December 4, 1972]

[Title Omitted in Printing]

ANSWER

Defendants, Bert A. David, Commander, Fort Dix Military Reservation and Melvin Laird, Secretary of Defense, through their attorney, Herbert J. Stern, United States Attorney for the District of New Jersey, by way of answer to the complaint say:

1. Defendants deny paragraphs 1 and 2.

2. As to paragraph 3 of the complaint defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Benjamin Spock is a resident of New York. Defendants admit that at the time the complaint was filed plaintiff Spock was the Presidential candidate of the Peoples Party in the 1972 election. Defendants contend, however, that at this time the plaintiff Spock is no longer a Presidential candidate.

3. As to paragraph 4 of the complaint defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Julius Hobson is a resident of Washington, D.C. Defendants admit that at the time the complaint was filed plaintiff Hobson was the Vice-Presidential candidate of the Peoples Party in the 1972 election. Defendants contend, however, that at this time the plaintiff Hobson is no longer a Vice-Presidential candidate.

4. As to paragraph 5 of the complaint defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Linda Jenness is a resident of New York. Defendants admit that at the time the complaint was filed plaintiff Jenness was the Presidential candidate of the Socialist Workers Party in the 1972 election. Defendants contend, however, that

at this time the plaintiff Jenness is no longer a Presidential candidate.

5. As to paragraph 6 of the complaint defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Andrew Pulley is a resident of New York. Defendants admit that at the time the complaint was filed plaintiff Pulley was the Vice-Presidential candidate of the Socialist Workers Party in the 1972 election. Defendants, contend, however, that at this time the plaintiff Pulley is no longer a Vice-Presidential candidate.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7, 8, 9 and 10.

7. As to paragraph 11 of the complaint defendants admit that they are sued in their official capacity for actions taken by them in their official capacity. Defendants further admit that Bert A. David is Commander of the Fort Dix Military Reservation and that Melvin Laird is the Secretary of Defense of the United States. All other allegations of paragraph 11 are denied.

8. As to paragraph 12 of the complaint defendants admit that the Fort Dix Military Reservation covers 55 square miles. Defendants further admit that when the land comprising Fort Dix was ceded to the federal government the State of New Jersey retained right of way easements on certain county roads within the territorial limits of the base. These roads are used by military and civilian personnel employed at the base and at times by other civilians. Defendants further admit that military personnel reside on the base with their dependents. All other allegations of paragraph 12 are denied.

9. As to paragraph 13 of the complaint defendants admit that the plaintiffs on September 9, 1972, directed a letter to defendant David. Defendants allege that the letter speaks for itself. All other allegations of paragraph 13 are denied.

10. As to paragraph 14 of the complaint defendants admit that by letter dated September 18, 1972 defendant David responded to the September 9, 1972 letter mentioned in paragraph 13 of the complaint. Defendants

allege that the letter speaks for itself. All other allegations of paragraph 14 are denied.

11. As to paragraph 15 of the complaint defendants admit that they were advised prior to September 23, 1972 that plaintiffs Spock and Pulley intended to come on to the Fort Dix Military Reservation on September 23, 1972. All other allegations of paragraph 15 are denied.

12. As to paragraph 16 of the complaint defendants admit that plaintiffs Spock and Pulley approached an entrance to Fort Dix at approximately 11:00 A.M. on September 23, 1972 and were met by Colonel James Simon. Attached hereto as Exhibit A and incorporated herein is a transcript of the conversation between Colonel Simon, plaintiffs Spock and Pulley and their attorney David Kairys. Defendants allege that the transcript speaks for itself. All other allegations of paragraph 16 are denied.

13. Defendants deny paragraphs 17 and 18 of the complaint.

14. Defendants admit to the allegations of paragraph 19 except that they allege that Ginaven and Misch were distributing the described booklets in a parking lot within the Fort Dix Military Reservation and not on a sidewalk.

15. In answer to paragraph 20 of the complaint defendants admit that on February 24, 1972, plaintiff Alan Hardy was placing anti-war demonstration posters on the windshields of cars in the parking lot of Timmerman Theater. This theater is geographically located in the middle of the Fort Dix Military Reservation. Hardy was escorted off the base and issued a letter of ejection. All other allegations of paragraph 20 are denied.

16. Inasmuch as Fort Dix records do not go back as far as 1968, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

17. Defendants deny paragraphs 22, 23, 24 and 25.

18. As to paragraph 26 of the complaint defendants admit that the plaintiffs in this action have not instituted any other action in the United States District

Court for New Jersey seeking the relief sought in this complaint. Plaintiffs Spock, Jenness, and the Socialist Workers Party, however, have instituted similar litigation in the United States District Court for the District of Rhode Island.

AFFIRMATIVE DEFENSES

1. This court lacks subject matter jurisdiction.

2. This suit is in legal effect a suit against the United States which is barred by the doctrine of sovereign immunity.

3. Plaintiff pamphleteers failed to pursue or exhaust the administrative procedures set forth in Fort Dix Regulation Number 210-27 which prohibits the distribution of pamphlets or other writings at Fort Dix without prior written approval of the Adjutant General, Fort Dix.

4. Plaintiffs Alan Hardy and Robert Stanton are guilty of laches.

5. If it is alleged that the candidate plaintiffs have a special right to campaign because of their status as candidates, their candidate status ceased as of November 7, 1972, and any such special right was lost.

6. On information and belief one or more of the plaintiff candidates were ineligible under the Constitution of the United States for the office they sought. Any such candidates cannot, therefore, be considered bonafide candidates or be entitled to any special rights that candidates may enjoy.

7. There is no constitutional right to engage in political campaigning or distribute pamphlets on a military base.

8. Plaintiff candidates are improperly joined with plaintiff pamphleteers.

9. The complaint fails to state a claim upon which relief can be granted.

10. Plaintiff Socialist Workers Party lacks standing to prosecute this action.

11. The action of the defendants in barring the candidate plaintiffs and excluding the plaintiff pamphleteers was neither arbitrary nor discriminatory.

HERBERT J. STERN
United States Attorney

By /s/ Richard W. Hill
RICHARD W. HILL
Assistant United States Attorney

EXHIBIT A

TRANSCRIPT—CONVERSATION BETWEEN COLONEL SIMON, SPOCK, PULLEY AND DAVID KAIRYS, ESQ.

ANNEXED TO FOREGOING ANSWER

MR. KAIRYS: Colonel Simon, I'm David Kairys. This is Andrew Pulley, and let me present Dr. Benjamin Spock.

COLONEL SIMON: Doctor Spock, How do you do sir.

MR. PULLEY: We came to see if we can talk to the GI's on the base about both our campaigns, given the fact that GI's have a right to vote and given the fact that in New Jersey that GI's can vote in New Jersey ballot. We think that they should have at least the right to hear the different issues. To this present date there is no doubt that GI's at Fort Dix have only heard from Agnew and Nixon and McGovern. They have yet to hear from my party, the Socialist Workers' Party or the party of Dr. Spock. Now, there was a recent ruling in Quonset Point where the federal court decided that it was perfectly legitimate to come on the base, on the open base on the open areas to address GI's and we want to exercise that right now.

DR. SPOCK: I would emphasize among other things, again, that the federal court, in deciding that we could not go on the closed part of parks, it said of course we could go on the open part of a base or any base that was entirely open. I would also reiterate the point if a soldier is entitled to vote, then it seems to us he's entitled to not only hear the issues but also to meet the candidates. It seems to us it's a mistrust of the American system when an Army base is afraid, apparently, to let its armed personnel hear the issues and speak to the candidates. It seems to us it is a mistrust of the American system.

MR. KAIRYS: Colonel, I would just like to point out as was pointed out in the letter written to the Commanding Officer, the Supreme Court of the United States has ruled that public areas of a military base are subject to the First Amendment and that anyone, including certainly a candidate for president or vice-president, should have access to those areas and be entitled to speak to people and hand out literature, and that is all they want to do. They don't come here for any disruption or any kind of chaos or anything that would interfere with the operations of the base, and they only ask that they be allowed to speak to the GI's, who I understand a lot of them have a day off today. They have been also ordered, the GI's, in a regulation to be very interested in voting and to vote themselves and in order to vote, in order to hear the candidates from these two parties they would have to hear them in public, in person as in this because they don't get the media coverage that Nixon and McGovern get.

DR. SPOCK: I was interested as we drove through the base to see a large sign there, Colonel Simon, saying Fort Dix is an equal opportunity employer. I didn't know whether that meant just civilian employees or whether that meant military employees. Certainly it seems to be equal opportunity means opportunity to hear the issues and see the candidates.

COLONEL SIMON: Well, we are certainly an equal opportunity employer here at Fort Dix, Dr. Spock, which means that we hire people regardless of their race or creed. Now, as I understand your letter that you have sent to me on the 9th of September, you asked for permission to come on the Post for the purpose of campaigning among the troops and for the purpose of distributing literature, campaign literature, among the troops. Is that correct?

DR. SPOCK: Correct.

COLONEL SIMON: And as I understand it, Mr. Pulley, you had your signature on the letter also.

MR. PULLEY: Correct.

COLONEL SIMON: As I understand it, that's your purpose in coming here today.

DR. SPOCK: Correct.

COLONEL SIMON: Now, as you know on the 18th of September we replied to that letter. The Commanding General of this post replied that campaigning, by not only Dr. Spock and Mr. Pulley but by any candidate, on the Fort Dix reservation is prohibited, not only by Fort Dix regulations but by Army regulations. Political speeches and campaigning on Fort Dix, the distribution of literature on Fort Dix without the prior approval of the Adjutant General of this post is prohibited. Fort Dix is an exclusive federal reservation. We have a military mission here to accomplish. No other candidate, other than yourselves, have asked for permission to come on the post to campaign. Had they requested, the reply would have been the same, regardless of the party or the person applying.

DR. SPOCK: Colonel Simon, do you mean to say that if President Nixon wanted to come here and give a semi-political talk, the Commanding General would tell him he could only come if he kept strictly away from politics?

COLONEL SIMON: Doctor, we are all working for the federal government. President Nixon is our commander-in-chief. I doubt very much that according to the rules that have been published by the Army, by Department of the Army, by the Department of Defense, that President Nixon would ask to come on post to conduct a political campaign. But the rules as they apply govern us, and those rules are that we cannot permit it.

MR. PULLEY: Vice-presidential candidate Agnew recently spoke and toured on the Navy installation of Quonset Point. Vice-President Agnew is not a part of the chain of command, but yet he's a candidate for the office of vice-president again. And yet he is allowed to do such a thing. The court ruling that Quonset Point did not leave Fort Dix out of the general approach

that the court ruling decided that is it decided that we could campaign on any open area on any open base, and I understand that Fort Dix would officially be an open base. The federal court passed the major ruling themselves and it is clear from what you had to say that you are going totally against what the court just ruled. Also one other thing. I understand that when I was in the service the main order that I was given before being inducted was that my cause was to defend the U.S. Constitution against all aggressors, both foreign and domestic. It appears to me that what is being done here is that it is not the constitution that is being defended, but the fact that the constitution is being violated by the top officials of the US Army at Fort Dix. We plan to take this case all the way to the Supreme Court if necessary to win our rights to campaign on this base. We think GI's do have a right to hear the views of both the People's Party and the Socialist Worker's Party.

DR. SPOCK: Certainly we have not come here in our own interests. We are both candidates of parties that have high idealism. We are coming here because we believe citizens have rights and we come here to help the citizens who happen to be in the military to exercise their rights to be informed about the election. So I think that it should not be emphasized that it is our rights as much as it is the rights of the armed service personnel. I certainly agree that if there are regulations here flatly disallowing us to come onto the base, even an open base like this, then all we can do is go to court, because it seems absolutely clear that the constitution does not say that a soldier loses his civil rights when he comes into the armed services and we are going to fight for that.

COLONEL SIMON: Well, I appreciate your views gentlemen; and this is a matter that I am sure will be ultimately decided by the courts and that's the proper forum for an argument of this type.

DEFENDANT'S EXHIBIT EV-37A-C1621-72

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed December 8, 1972]

[Title Omitted in Printing]

INTERROGATORIES

To: KAIRYS & RUDOVSKY, ESQUIRES
1427 Walnut Street
Philadelphia, Pennsylvania 19102

TAKE NOTICE that the defendants require the plaintiffs to answer the following interrogatories under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure within 30 days from the date of service hereof:

1. State the date and place of birth of each plaintiff.
2. State the current address of each plaintiff.
3. State the names and addresses of all persons having knowledge of facts relevant to this litigation.
4. As to plaintiffs, Ginaven, Misch, Hardy and Stanton, state whether application for permission to distribute pamphlets was made to the Adjutant General, Fort Dix, prior to distributing the pamphlets which resulted their ejection from Fort Dix.
5. If the answers to interrogatory 4 is in the affirmative state the following for each person:
   a. Date application was submitted. Attach copy of application.
   b. Date application was approved or disapproved by the Adjutant General, Fort Dix.

HERBERT J. STERN
United States Attorney

By /s/ _____
RICHARD W. HILL
Assistant United States Attorney

I certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

_____

Dated:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Filed January 3, 1973]

[Title Omitted in Printing]

PLAINTIFFS' RESPONSE TO INTERROGATORIES BY THE DEFENDANTS

Pursuant to Rule 33, and in response to the interrogatories propounded by the defendants, David Kairys, Esq., counsel for plaintiffs, deposes and responds as follows:

1. and 2. For each plaintiff:

Name and Address	Date of Birth	Place of Birth
Benjamin Spock c/o Antilles Yacht Service The Lagoon Estate Frydenhoj P.O. Box 721 St. Thomas, Virgin Islands 00801	May 2, 1903	New Haven, Conn.
Julius Hobson 1319 4th St., S.W. Washington, D.C. 20024	May 29, 1922	Birmingham, Alabama
Linda Jenness 410 West Street New York, New York	Jan. 11, 1941	El Reno, Oklahoma
Andrew Pulley 410 West Street New York, New York	May 5, 1951	Greenwood, Mississippi
Socialist Workers Party 14 Charles Lane New York, New York	1938	
John Ginaven 1268 Kelmar Ave. West Chester, Pa. 19380	June 13, 1941	Akron, Ohio

Name and Address	Date of Birth	Place of Birth
Donald Misch Winthrop House G-21 Harvard College Cambridge, Mass. 02138	Nov. 23, 1951	Chicago, Ill.
Alan Hardy 4816 Hazel Ave. Phila., Pa. 19143	April 8, 1943	Rochester, N.Y.
Robert Stanton 4714 Springfield Ave. Phila., Pa. 19143	Dec. 5, 1947	Phila., Pa.

3. There were many witnesses to the exclusion of the candidate plaintiffs from the Base on September 23, 1972, including representatives of defendants. The following persons witnessed the incident involving Plaintiffs Ginaven and Misch:

Tom Gaffney
1309 Medford Rd.
Wynnewood, Pa. 19096

Jon Landau
141 Harvey St.
Phila., Pa. 19144

Jerry Fritts
254 South 23rd St.
Phila., Pa. 19103

4. Plaintiffs Ginaven, Misch, Hardy and Stanton did not make prior applications for permission to distribute pamphlets.

I hereby certify, under penalty of law, that the foregoing statements are true to the best of my knowledge, information and belief.

/s/ David Kairys
David Kairys

Dated: December 29, 1972

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed January 10, 1973]

[Title Omitted in Printing]

NOTICE OF MOTION

To: Kairys & Rudovsky, Esqs.
1427 Walnut Street
Philadelphia, Pennsylvania 19102

PLEASE TAKE NOTICE that on January 29, 1973, the date set for trial in this matter, at 10:00 A.M. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorney for the defendants, will apply to the United States District Court for the District of New Jersey, Honorable Clarkson Fisher, United States Courthouse, Trenton, New Jersey, for an order dismissing the complaint on the following grounds:

1. This court lacks subject matter jurisdiction
2. This suit is in legal effect a suit against the United States which is barred by the doctrine of sovereign immunity.
3. Plaintiff pamphleteers failed to pursue or exhaust the administrative procedures set forth in Fort Dix Regulation Number 210-27 which prohibits the distribution of pamphlets or other writings at Fort Dix without prior written approval of the Adjutant General, Fort Dix.
4. There is no constitutional right to engage in political campaigning or distribute pamphlets on a military base.
5. Plaintiff Socialist Workers Party lacks standing to prosecute this action.
6. Such other grounds as may appear at the time of trial.

The defendants will rely on briefs previously submitted to the Court.

HERBERT J. STERN
United States Attorney

By /s/ Richard W. Hill
RICHARD W. HILL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Title Omitted in Printing]

TRANSCRIPT OF PROCEEDINGS

Trenton, New Jersey

Monday, January 29, 1973

BEFORE:

HONORABLE CLARKSON S. FISHER, U.S.D.J.

APPEARANCES:

HERBERT J. STERN, United States Attorney,
BY: RICHARD W. HILL, Assistant U.S. Attorney,
For the Government.

BALL, BROEGE, ELWELL, FOGEL & LIVINGSTON and KAIRYS & RUDOVSKY (Pennsylvania Bar),
BY: DAVID KAIRYS, Of Counsel,
For the Plaintiffs.

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[2] MR. KAIRYS: Good morning, your Honor.

THE COURT: Good morning. Are you ready to proceed in Spock against David?

MR. KAIRYS: Yes, we are.

MR. HILL: Your Honor, I think several points should be made preliminarily. First, the Government has pending today a motion to dismiss. Would you prefer that this be held until the conclusion of the testimony?

THE COURT: Yes.

MR. HILL: Okay. In that event, that will be held. I think that also it would be appropriate at the outset of this hearing to get perfectly clear, for the record,

what will be the final record in this case, if that is agreeable with Mr. Kairys—

MR. KAIRYS: Sure.

MR. HILL: —to approach it along those lines. First of all, it would be satisfactory with the United States Attorneys' office if everything that was of record at the time of the—or for the hearing on the application for preliminary injunction be considered as part of the final record in this case.

MR. KAIRYS: Absolutely. We join with [3] you and so move.

THE COURT: All right.

MR. HILL: And I just want to indicate that this would specifically include four affidavits that were filed by the United States, those of Colonel Olsen and French, and two affidavits of Major Beattie.

MR. KAIRYS: Your Honor, we have agreed to waive any hearsay objections to those affidavits. We don't admit the truth of anything said in there or the facts stated, but just that we are waiving the hearsay objection.

THE COURT: All right. Fine.

MR. HILL: And I think with the general conclusory statement that everything that was of record originally is of record on the final hearing, we are prepared to take testimony.

MR. KAIRYS: Okay. Your Honor, just by way of brief introduction, primarily, our witnesses today will concern the issue of jurisdiction. In addition to that, we have a few pictures to offer to you of the Base that go to the main case, but it's merely jurisdiction. We will make it as brief as we can.

THE COURT: All right. Will you finish [4] today?

MR. KAIRYS: Definitely.

THE COURT: Oh, good.

MR. KAIRYS: I don't know how much Mr. Hill has, but we will be finished very shortly.

MR. HILL: I have four or five witnesses, your Honor, but it's my belief that their testimony will be relatively brief and that we should be able to conclude today.

THE COURT: All right.

MR. KAIRYS: John Ginaven, take the stand, please.

JOHN GINAVEN, called as a witness on behalf of the plaintiffs, being first duly affirmed, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr. Ginaven, you are one of the plaintiffs in this case; are you not?

A That's correct, yes.

Q And where are you working now?

A I work for C.C.C.O., an agency for miliary draft counseling in Philadelphia.

Q Now, I asked you, Mr. Ginaven, to find out some costs of alternative means of getting information to soldiers on Fort Dix; did I not?

[5] A Yes, you did.

Q Could you please recite for the Court what you found?

MR. KAIRYS: Now, perhaps we should say right, now, Mr. Hill has agreed some of this is hearsay, and, he, similarly to my waiving of the objection before, he's not admitting the truth or the relevancy, but he has agreed not to object as to hearsay; is that correct?

MR. HILL: That's right. Your Honor, to the extent that this witness presents hearsay testimony as to the costs of their advertising and various media, for instance, newspaper advertisements, television, I'm not going to make any hearsay objection as to the cost data that is adduced.

I do have a relevancy objection. I see no relevancy whatsoever in this proceeding as to the cost of alternative means of presenting a point of view to Fort Dix. I do not believe that is the obligation of any of the defendants in this matter or the United States Government to make any of its decisions based on analysis of the ability of any of the plaintiffs to advertise or campaign using one method as opposed to another method. I surely think that would be the wrong approach for the Govern-

ment to take [6] with respect to this kind of problem. That's my relevancy objection.

THE COURT: All right. I'll accept the evidence. I will worry about its relevance later, because there is no question this matter is going to be reviewed.

MR. KAIRYS: Its only purpose in being offered is not to have any relation to what the defendants must or must not do but only for the purpose of jurisdiction, your Honor. That's all. So it really isn't offered for the purpose you are talking about.

MR. HILL: Okay. I do not see any relevancy at this point on the jurisdiction question. I will try not to continue my objection as long as a continuing objection is noted on both of the jurisdiction and other grounds previously noted.

THE COURT: All right.

BY MR. KAIRYS:

Q What did you find, Mr. Ginaven?

A On January 18, 1973, I called Time Magazine in New York City to inquire about the cost of placing an ad. I talked with Miss Roma in Advertising Sales, described the purpose of the ad. She mentioned that the New York [7] Metropolitan addition or the supplements of it do not reach Fort Dix, and, therefore, I would have to use the Time Eastern addition. It has a circulation of a hundred seventy-one thousand nine hundred and eight in New Jersey. No data for Burlington County or Fort Dix in particular. She said that a full page ad costs $12,125 black and white or $18,790 in color. [8] Q Does that include a cost for preparing an ad?

A No. That's just placement. The preparation would be above and beyond that.

Q Okay. Who else did you call?

A I called—on the same day I called WFIL radio in Philadelphia. I talked with Jim Wilson there, in Radio Sales, explained the purpose of the ad, again in reaching G.I.'s with information about discharges. He indicated that lots of G.I.'s listen to this station. They do reach Fort Dix. He had no solid estimate on the

number of listeners there. He suggested that the best way to reach them would be with a packet of ads. You need more than one, one minute spot to get your message across. He indicated their standard package they announce per week for, you know, regular advertisers, would be twelve-sixty second announcements which would cost $1,116 a week. I asked him about the possibility of a three to five minute spot, perhaps ten minutes, in order to read the booklet on the air, and he indicated they do not allow ads of that size. Sixty second is the largest.

Q Now, when you say "read the booklet," you mean to read the entire contents of the booklet that you tried to hand out at Fort Dix?

[9] A That's correct, yes.

Q And that booklet concerns G.I. rights, the rights of G.I.'s, of people in the military?

A Right. That's one of the booklets we were passing out, yes.

Q Right. Now, with a sixty-second spot, you could perhaps advertise the availability of this booklet but not put in the contents of it?

A That's correct, except that it would then take the G.I. some action in order to get the booklet itself.

Q He would have to do something in response to the ad—

A That's right.

Q —to get it? Okay. Have you had any experience with that kind of ad, where you just put on a spot and talk about the availability of something?

MR. HILL: I have an objection, your Honor. I don't know what relevancy his experience is, whether or not he's competent to give an opinion in this area.

THE COURT: I'll allow. Go ahead.

A We have—C.C.C.O. has—had several radio spots on WMMR, advertising the availability of [10] our counseling services.

Q WMMR is a station in Philadelphia?

A Philadelphia, right.

Q And what's been the response?

A The ads ran, I believe, over a week and a half, period, and there were probably over a dozen spots, although I don't know the count for sure. We've had one or two phone calls in response to that.

Q Now, on the day you were at Fort Dix and you were picked up by the military, you did get to hand out some of your booklets; didn't you?

A Yes.

Q And roughly, what proportion of the soldiers that you offered the booklet to took it?

A Well, I'd say most of them took it. I'd say roughly, you know, three-quarters of the number of people. We weren't there that long that, you know, we were picked up before we handed out very many.

Q Okay. Now, did you make any inquiries of any local civilian groups?

A Yes. I called the Burlington County Times and the Trenton Times. They both had very insignificant circulation on the base.

Q Okay. Now, did you consult with anyone [11] concerning how much preparation you would need in order to reach people? For instance, you mentioned one of the radio stations had said that one ad really wouldn't accomplish much of anything. You need a packet.

MR. HILL: I do have an objection to this question, Judge. My agreement was to permit hearsay testimony as to the cost of advertising. My agreement was not to permit hearsay testimony as to somebody's conception of how much advertising he has to sell before it becomes effective, and that's what this question seeks to elicit information as to.

THE COURT: I'll take it for what it is. Go ahead.

A On January 24 I received a return call from my January 18th attempt to reach the Gerald Stevens Advertising Company in Philadelphia. Mr. Steve Horn called me back. He's president of the Advertising Agency. I explained the purpose of the advertising, to reach G.I.'s with information about their rights, asked him about the effectiveness of advertising. He said that there are no real accurate statistics on returns for ads on radio or [12] t.v. spots. It depends on the type of ad and the

response you were trying to get from it. He did say that a rule of thumb was about one per cent return on ads.

[13] Q Did he make any other suggestions to you?

A Yeah. He did say—I mentioned that we were trying to reach a large number of G.I.'s, that if we were leafletting. We could, you know, actually hand the booklets out. We wanted to reach a large number to get them with the same information. He indicated that we would probably need a campaign, an ad campaign of a combination of radio, t.v. spots, ads in a diverse number of magazines, such as a Playboy or Time Magazine or Sports Illustrated, he mentioned, plus a direct mail to a G.I.'s on Fort Dix. He estimated that if we got a copy of the complete mailing list for all the G.I.'s on the base, it would cost between $3500 to $4000 per thousand G.I.'s that we mail to.

I did try to get a copy of the mailing list and called Mrs. Kramer, talked to Mrs. Kramer in the Fort Dix Administrative Services. She informed me that the mailing list for the G.I.'s was not available to anyone.

MR. KAIRYS: Okay. I have nothing further on this witness.

THE COURT: Cross.

CROSS EXAMINATION
BY MR. HILL:

Q Mr. Ginaven, would you tell the Court, please, [14] exactly where you were distributing your leaflets, please?

A Yes. I was at the—just inside the gate at—I can't even remember the name of the town.

Q The Wrightstown entrance?

A Wrightstown, right. Excuse me.

Q And there is a sidewalk—isn't it true—that runs from Wrightstown into the Base?

A Right.

Q And you were either on that sidewalk or right adjacent to that sidewalk?

A I was on that sidewalk.

Q On the sidewalk?
A Yes.
Q And approximately how far from the entrance to the Base were you?
A It varied from, oh, I'd say, about a hundred yards to—right up to the Post, the gate Post there.
Q And you were distributing leaflets to people entering the base?
A Both entering and leaving.
Q And is there a sidewalk on just the one side of the road there?
A I believe so. I can't remember, to tell you the truth.
Q All right. So you could have accomplished your [15] purpose of handing out leaflets whether you were inside the base or just outside the Base in Wrightstown proper; couldn't you?
A I don't believe I could have. Most of the G.I.'s use a foot path that's worn across the grass and avoid going through the gates.
Q Well, you could have stood just outside that foot path and approached those G.I.'s; couldn't you?
A Yes.
Q And accomplished your purpose by disseminating information to them; couldn't you?
A I don't believe that is the best location for accomplishing our purposes, no. I believe further on the Base near the cafeteria perhaps would be better.
Q But you weren't near the cafeteria were you?
A No.
Q You were right near the Wrightstown entrance?
A That's correct.
Q Okay. Now, the Trentonian, the Trenton Times and the Burlington County Times are all distributed on Fort Dix; aren't they?
A Somewhat, yes.
Q Okay. Did you contact any local radio stations? By local radio stations I mean either Trenton radio [16] stations or Burlington County Radio stations.
A No, I didn't. I called WCAM, which is in Camden, but they don't reach Fort Dix.

Q So you have no idea what their rates are on these locations?
A No. No, I don't.
Q You gave some direct testimony with respect to response to advertising. What kind of response were you looking for?
A We were looking for—if we were advertising the booklets on discharges, we would look for direct orders for these six free booklets.
Q You don't know, do you, why people didn't respond to your advertising?
THE COURT: I don't think he said that they hired any.
MR. HILL: No, respond to advertising.
THE COURT: You mean to the leaflets that he did distribute?
MR. HILL: No. He testified on direct examination—if my recollection is correct, your Honor—that on several advertising programs that he's done by radio, I believe—
THE WITNESS. Some spots on WMMR.
MR. HILL: —some spots on radio that [17] he had very minimal response to that advertising. Isn't that correct?
THE WITNESS: Yes.
THE COURT: Could you estimate the percentage?
THE WITNESS: No. I don't know the number of listeners.
THE COURT: No way you could tell that?
THE WITNESS: No.

BY MR. HILL:

Q And the question is you don't know why you didn't get a response; do you?
A No.
[18] Q I mean, it's perfectly—it's just a possibility that many people were reached and just didn't care to respond as that or as if nobody was reached at all; isn't that true?
A I don't know. I don't know, you know, I don't have any information on the—on surveys of advertising.

Q Right. So the fact that you didn't get a response to this minimal radio advertising doesn't say anything about the liability of that particular media; does it?

A I wouldn't say it doesn't say anything, but isn't—

Q People that you reach just might not agree with your point of view; isn't that true?

A They might not, yes.

Q And might not respond for that reason; correct?

A Might not, yes.

Q Did you make any effort to contact a magazine called the Fort Dix Post?

A Yes, I called.

Q And what information did you receive from the Fort Dix Post?

A I was told—you know, I explained the ad [19] and I was told that you needed prior approval by the public information office for an ad in the Fort Dix Post.

Q Who told you that?

A Doris Waltz in Sales Advertising.

Q And the Fort Dix Post is not a military paper; is it?

A Mrs. Waltz told me that it was printed for the army, that's why—

Q Let me ask you the question again and maybe more precise: Is the Fort Dix Post published by the Department of Defense or any of its organs?

A No, it isn't.

Q It's a private publishing company—

A Yes.

Q —isn't it? And the person who told you that the matter must be approved by the Post Information Office is a civilian that has no connection with the Government; isn't that true?

A I believe so, yes.

Q Has no connection to any of these defendants in this case?

A I believe so.

Q Can't speak for any of the defendants in this case; right?

[20] A I believe so.

MR. HILL: Thank you.

THE COURT: Anything else?

MR. KAIRYS: Just very brief.

REDIRECT EXAMINATION:
BY MR. KAIRYS:

Q She told you the Fort Dix Post wasn't owned by the military but it was censored by the military?

A Well, she said I had to get prior approval from the public information.

THE COURT: That was pretty clear from the last hearing—wasn't it?—that that was the status.

MR. HILL: I don't think so, your Honor. We are now talking about a hearsay statement by this witness with respect to what a civilian not employed by the Government told him with respect to publication by a private newspaper.

THE COURT: All right.

MR. HILL: I think all the hearsay testimony I would request that it be stricken.

THE COURT: I'll let it stay.

BY MR. KAIRYS:

Q Now, just to repeat. I think there was [21] some confusion on your initial testimony about response to ads. The radio ad that you placed was in Philadelphia; right? It wasn't in Fort Dix, first of all.

A It was a Philadelphia radio station, yes.

MR. HILL: I ask that counsel for the plaintiff not lead his own witness, please.

Q And would you repeat again your response when you were personally on the post and able to hand people this booklet?

A I'd say most of the people I approached took a copy of the booklet or two. As far as a number goes, I'd say, you know, at least three-quarters of the number of people.

MR. KAIRYS: Thank you. Nothing further, your Honor.

THE COURT: All right. You may step down, sir.

(Witness excused.)

[22] MR. KAIRYS: I call John Landau.

MR. HILL: What was the name of this witness, please?

MR. KAIRYS: John Landau.

JOHN LANDAU, called as a witness on behalf of the plaintiffs being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr. Landau, where do you work?
A I work at CCCO in Philadelphia.
Q What's your position?
A I'm the staff attorney of CCCO.
Q And what courts are you a member of the bar?
A I'm a member of the bar of New York.
Q Okay. Did you make some calls similar to the ones that Mr. Ginaven has just talked about?
A Yes, that's right.
Q Would you tell the court what you found out, please?
A Yes. I spoke with two people similar to the conversations that John Ginaven was having. I spoke with the Army Times in Washington, D.C. and with a local t.v. station, WCAU, in Philadelphia. For the Army Times I spoke with Jim Wilmot who's an advertising salesman there. I called him, and he responded, called [23] me back shortly thereafter. This was on the 18th of January. Mr. Wilmot indicated that the cheapest possible way of reaching GI's at Fort Dix through his paper would be to advertise in the Army Times solely in the United States. He indicated that I could do this at a rate of $1900 per page. They have a circulation of a hundred and thirty-five thousand throughout the United States, but he couldn't break that down by Base.

I went on to describe the probable content of my ads. I indicated that we had G.I. rights, booklets and information about discharges that we were trying to reach the G.I.'s with. And he responded that in that case there was some question as to whether I would be able to get those into the Army Times. He stated that I would have to—

MR. HILL: Your Honor, I object to this hearsay testimony on that grounds, as to whether he would be able to get things into the Army Times.

THE COURT: I will allow it.

A He indicated that I would have to submit the material to the—to an editorial board of the Army Times, and that they would rule on whether or not I could get it in there.

I went on and explained the size of the [24] booklet and asked them about the possibility of presenting our entire booklet in the Times. We were trying to present six free booklets to the G.I.'s, none of which could be produced, or at least could reasonably be produced in the Army Times, in, say, less than a page, so that the total—the total cost of presenting the booklets in the Army Times, the six booklets, would be six times nineteen hundred dollars or eleven thousand four hundred dollars.

I then spoke with WCAU t.v. in Philadelphia. There I spoke with Mr. Miller Parker, who's an advertising salesman there. I didn't actually reach him until the 27th of January. I explained—Well, first of all, he explained briefly to me that it was very difficult to give prices on advertisements because it depended very much on the individual t.v. show, but he says that roughly a 60 second advertisement on his network would cost $2600 to $3200. Again, I went on to explain our purpose, to try and reach G.I.'s at Fort Dix with the content of the booklets. He responded they had a listening audience of nine hundred sixty-eight thousand, he said was an average at night but he had no idea as to how many of those people were at Fort Dix. But he did say that if I wanted to reach a substantial number of G.I.'s with my information, [25] I would have to do a series of advertisements on t.v., what he described as kind of a saturation campaign. He suggested that I present my ads over the

course of three to five weeks, that for this period he could give me seven to ten spots per week, and that the cost of this campaign would be somewhere in the area of thirty-five to fifty thousand dollars.

I then went on to ask if there was a possibility of a ten minute spot on the t.v. show. He simply had no experience with that. He doubted that I could get that because it would break up their individual programming that was already scheduled.

Q That would be ten minutes to read the contents of one of the booklets?

A That's right. That's what I was intending.

Q Now, you've also brought with you today some figures on the value and the cost in money terms of CCCO's campaign to having G.I.'s informed of their rights; have you not?

A Yes, I have.

Q Could you give those figures, please.

MR. HILL: Just a second, your Honor. I do have an objection. If he's got some specific bills, you know, when he's expended money, that may be one thing. I'd examine those one at a time. Just a general statement [26] as to this man's opinion as to the value and cost of a committee's time I think is of no relevance. I don't think—I'm not sure that there has been any foundation laid to establish that this witness is competent to testify with respect to this. I don't think there has been any evidence laid to show that this witness is a representative or a duly authorized representative of CCCO—

THE COURT: Staff attorney.

MR. HILL: I'm not sure that he's been duly authorized by whoever runs that organization.

THE COURT: He has said so.

MR. HILL: And even if he has been authorized by that organization, that organization is not a party to this lawsuit and their costs should not play a factor in this lawsuit. They are not a plaintiff.

THE COURT: What kind of information are you looking for?

MR. KAIRYS: Your Honor, I should point out at this point the Third Circuit in talking about this issue of jurisdiction said it's not so much of the extent of infringement [27] of the right that we should measure, but the value of, for instance, the campaign that the candidates have; and we're going to produce some evidence of the value of that campaign. In connection with that I'm introducing with this witness the value of the campaign to inform G.I.'s of their rights. It's not a presidential campaign but it's an overall effort.

THE COURT: What is it, the cost of the CCCO for a certain period of time running it?

MR. KAIRYS: Yes, and he's going to estimate much of it is devoted to getting estimates for G.I.'s. I can lay some foundation—

MR. HILL: I would just like to make one more statement, your Honor. Again, it stems from the fact that the CCCO is not a party to this lawsuit. We are dealing with about four individual pamphleteers with respect to this individual issue, I gather. In so far as this Court should be concerned is only distributing leaflets for values that they individuallly believe, not because of their [27] affiliation, we are not dealing with CCCO's rights to make a description.

THE COURT: Objection's overruled. Go ahead.

BY MR. KAIRYS:

Q Mr. Landau, are you authorized by CCCO to present these figures from their official budget from the organization?

A Yes, I am.

Q Could you present them, please?

A Specifically on the booklet, first of all, I guess. We received a grant to produce the booklet, and we've received eighteen thousand dollars in funds, and this money has gone simply to the production of booklets, production and distribution to local counseling centers for distribution to G.I.'s

In addition to this eighteen thousand, we have—I should say this eighteen thousand doesn't include the

salaries of individuals who actually wrote the booklets, which took a considerable amount of time.

Q What portion of your national budget does the organization estimate is devoted to a campaign to see that G.I.'s are informed of their rights with booklets such as this?

A Yes. We spoke about this. We couldn't get [29] this very exact at all. But we know that certainly more than half of our budget is devoted to presenting G.I.'s with opportunities to know what their G.I. rights are, and what their rights to discharges are. We estimated it was somewhere between two-thirds and three-quarters of our national budget. Our national budget is two hundred fifty-seven thousand dollars, so this comes out to a hundred and seventy-one thousand to a hundred ninety-two thousand seven hundred and fifty dollars to presenting this material to G.I.'s and G.I. rights in general.

MR. KAIRYS: Could these pictures be marked, please?

THE COURT: Mark them for identification.

MR. KAIRYS: I'm not sure what number we are up to from the last hearing. You want to start over?

THE CLERK: Start over.

MR. KAIRYS: It might be confusing.

THE COURT: Why don't we start with 1-A.

THE CLERK: Okay.

THE COURT: While he's doing that, might I ask, are either one of you gentlemen getting a transcript of this? I suppose you [30] are.

MR. HILL: I'm sure we will get a transcript at the appropriate time, maybe sooner than that.

THE CLERK: That's P-1A and P-2A for identification.

BY MR. KAIRYS:

Q Mr. Landau, I show you exhibits P-1A and P-2A. Can you identify these pictures?

A Yes. These are pictures of Mr. Don Misch and Mr. John Ginaven, both from CCCO. This is the actual day that they were—this is a picture of their actual distribution to G.I.'s at Fort Dix, the day they were picked up by military base.

Q You were there yourself?

A Yes, I was there. I was standing very close to the person taking the photographs.

THE COURT: Is that a faithful representation of what you saw on that particular day?

THE WITNESS: Yes, it is.

MR. KAIRYS: Can we show them to the Court and to the U.S. Attorney? Do you want to see them?

MR. HILL: I'll take them over to the [31] counsel table.

MR. KAIRYS: Sure.

MR. HILL: Mr. Kairys, are these pictures offered solely for showing the defendants Ginaven and Misch distributing leaflets on the day in August when they were taken off the base by the military people?

MR. KAIRYS: For that purpose, and also to show that this area is where they were distributing leaflets is open to the public and essentially part of the road right through Wrightstown.

MR. HILL: May I ask a couple of questions of the witness?

MR. KAIRYS: Maybe his Honor should look at the pictures first.

MR. HILL: They haven't been offered in evidence yet.

THE COURT: I'll look at them. Don't you trust me? They didn't enlarge pretty well.

MR. KAIRYS: No, pretty fuzzy.

THE COURT: Go ahead, Mr. Hill.

VOIR DIRE EXAMINATION
BY MR. HILL:

[32] Q Mr. Landau—is that how you pronounce?

A That's correct.

Q Will you show me which persons on this picture are Mr. Ginaven and Mr. Misch?

A Well, I don't know how I can describe it to the Court.

MR. HILL: I would ask if it's satisfactory with the Court that he circle the people with the pencil. I honestly can't tell—

THE COURT: Just point it out to me.

THE WITNESS: Mr. Ginaven is this gentleman here (Indicating) in what looks like a blue shirt. I guess the farthest from the camera.

MR. KAIRYS: You are on P-2 now?

THE WITNESS: I'm sorry. I'm on P-2A.

MR. HILL: Right.

THE WITNESS: Mr. Ginaven is standing closer to—well, farther away from the center of the base.

MR. KAIRYS: Would you show to his Honor where the base starts approximately?

THE WITNESS: The base starts very [33] close to the railroad tracks.

THE COURT: How far from the corner, would you say, estimate?

THE WITNESS: Perhaps I would estimate twenty-five yards.

THE COURT: Okay.

MR. KAIRYS: Right near where that railroad crossing sign is?

THE WITNESS: Yes.

BY MR. HILL:

Q You pointed out Mr. Ginaven—

A Yes.

Q —in P-2A. Where is Mr. Misch?

A Mr. Misch is standing right here (Indicating).

Q The gentleman in the white shirt that's in foreground?

A Yes.

Q And with respect to P-2A, the sidewalk that Mr. Ginaven is standing on leads directly into Wrightstown?

A That's correct.

Q And this is where—is he in the process of distributing a leaflet when you took P-2A or when P-2A was taken?

A When P-2A was taken, he was offering a booklet.

Q And where were you?

[34] A I was standing, again, closer to the center of the base, right next to the photographer.

Q There are two gates at the entrance, at the Wrightstown entrance; aren't there?

A This particular Wrightstown entrance?

Q Yes.

A There are no gates. There are a couple of—sort of brick mounds, as I remember, standing out away from the road.

Q This picture doesn't disclose that; does it?

A The bricks, I guess, are away from the road. Do you see from here?

Q Isn't it true that there were also signs indicating that you were entering Fort Dix at this point?

A I believe there is a sign saying "welcome to Fort Dix."

Q There is a sign here that says "welcome to Fort Dix?"

A That's what I remember.

Q Isn't there a sign that says that this base is patroled by military police?

A There may be. I simply don't remember.

Q And if there was, this picture certainly doesn't show it, does it?

A That's true.

[35] THE COURT: They had a sign saying "Welcome, Fort Dix?"

THE WITNESS: Yes, there is.

THE COURT: And you believe them; right?

MR. HILL: I object to the admission of these on the grounds that they are not representative or do not accurately depict the entrance to Fort Dix at this point. I have no objection to their admission in so far as they depict Ginaven and Misch distributing booklets.

THE COURT: Obviously it doesn't show. For what it does show, I'll admit them.

MR. KAIRYS: We will offer other pictures that show some of the others that show "visitors are welcome", some other signs as you come into the base. If that's

what you rather have. This is not offered for that purpose.

THE COURT: How many pictures do you have?

MR. KAIRYS: There are about—

THE COURT: Mark them.

MR. KAIRYS: All right.

THE COURT: No. I was just telling [36] the clerk to mark them.

MR. KAIRYS: It's about ten more.

THE COURT: Why don't we do this: Show them to Mr. Hill. We will take five minutes. Show them to Mr. Hill. Maybe he can agree on this. Show him for what purpose. I'll mark them for identification, and go over them yourselves. In the meantime, I have another matter to take care of.

THE CLERK: P-1A and 2A in evidence.

(Recess.)

(Exhibits P-3A to P-17A received and marked for identification during recess period.)

[37] MR. KAIRYS: Mr. Landau, please take the stand, please.

JOHN LANDAU, resumed.

DIRECT EXAMINATION (continued)
BY MR. KAIRYS:

Q Okay, Mr. Landau, I am now going to present you Plaintiffs Exhibits 3-A through 11-A, and I'd like you to take them one at a time, read the number on the back, and explain if it accurately depicts what you saw. I believe you were there on the day.

Explain that, when these were taken and if you were at each one of these places. But explain that to each one. Okay. We'll start with 3-A.

A I was with the photographer on November 21, 1972, when—mostly in the morning—when all of these photographs were taken.

This first photograph is taken from the main—the main shopping center at Fort Dix, the one with the name PX,

and it accurately depicts what I saw, which is picture across the parking lot of the shopping center, the bowling alley across with a couple of what appeared to be civilians in the parking lot.

Q Okay. And 4-A?

A 4-A is an accurate depiction of a photograph [38] that I was actually in. I was—this is a picture of myself and some other—again, what appeared to be civilians buying pretzels at a soft pretzel stand. Again, this was at the rear of the main shopping center at Fort Dix.

Q On 3-A, do these cars that are in the forefront have any military identification or do they appear to be civilian cars?

A The cars that I saw, these cars in the forefront, had no military stickers that I could see.

Q Okay. Now, 5-A.

A 5-A. This is again a picture at the main post shopping center. This is a picture—this is an accurate depiction of, again, in the rear of the shopping center, a laundry truck and some shoppers walking by.

Q 6-A.

A This is again an accurate depiction of what we saw that morning. This is a picture of traffic entering and leaving Fort Dix on New Jersey Route 68, most of the traffic appearing to be civilian.

Q 7-A.

A This again is a picture at one of the entrances to Fort Dix. This is an accurate depiction of what I saw. It's a picture of the entrance where [39] Route—New Jersey Route 68 enters Fort Dix. There is a sign saying "Visitors Welcome" right at the entranceway.

Q 8-A.

A 8-A. Again, an accurate depiction of what I saw that morning. This is a picture as we were driving into Fort Dix on New Jersey State Highway Route 68. This is a picture of a Trailways charter bus driving through on Route 68 ahead of us.

Q 9-A.

A Again, an accurate depiction of what we saw. This is a picture of the Route 68 at the circle as you come into Fort Dix from Route 68. This is a picture of the road to

the right of Route 68 and some business and civilian traffic on that road.

Q Okay. 10-A.

A This is a picture of a—the church parking lot—one of the church parking lots at Fort Dix. There is a sign for visitor parking in the foreground of the picture. Again, an accurate depiction of what we saw.

Q And 11.

A Finally, this is again an accurate depiction of what we saw across the street from the church. A sign for a brigade headquarters with a lower sign [40] saying "Visitor Information," and a business truck passing.

MR. HILL: Judge, would you like to look at these first. I have a few questions on the pictures.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION
BY MR. HILL:

Q Mr. Landau, what date were these pictures taken again?

A November—let me—the pictures were taken on November 21, 1972.

Q Were you present when the pictures were taken?

A Yes, I was.

Q With respect to when every one of these pictures were taken?

A Yes, I was.

Q Directing your attention to photographs 5-A, 6-A and 7-A, those photographs don't depict all the signs that were present when you entered that Fort; do they?

A Again, I'm not certain. There certainly may be more signs.

MR. KAIRYS: Would you explain the question? Not all of them are entrances. [41] There's one that's an exit. One of them looks like a shopping center.

MR. HILL: Excuse me. This is the wrong picture. I'm referring to 7-A, 6-A—

BY MR. HILL:

Q I believe they are the only pictures with respect to this Route 68 entrance. Right?

A I guess, yeah.

Q Aren't there other signs present at that entrance that are not depicted in the picture? For instance, isn't there a sign that says "All vehicles entering are subject to search?"

A I don't remember that sign. It may in fact be there. I don't remember.

Q Isn't there a sign at the Route 68 entrance which says that roads are patroled by military police?

MR. KAIRYS: I object, your Honor. He says he didn't know any other signs. If there were other signs, let him bring in a witness and tell us about it. We are not disputing—

THE COURT: He says there could be.

MR. HILL: Your Honor, I have an objection generally to all these exhibits on two grounds: One, particularly with [42] respect to Route 68 entrance. I object on the grounds that it's not truly representative of the entrance. With respect to the other pictures, I know of no relevance of these pictures to this litigation whatsoever.

THE COURT: All right. Overruled. Mark them in.

THE CLERK: 3-A to 11-A in evidence.

MR. KAIRYS: You can step down.

THE COURT: Do you have any cross?

MR. HILL: Yes.

MR. KAIRYS: Oh, you have more cross.

MR. HILL: I haven't had any cross so far.

CROSS EXAMINATION
BY MR. HILL:

Q Would you tell me the type of organization for whom you are a staff attorney?

A CCCO, an agency for military and draft counseling.

Q What does CCCO stand for?
A We were founded in 1948 as the Central Committee for Conscientious Objectors.
Q And you work in the Philadelphia office?
[42a] A That's correct.
Q And how many offices does CCCO have?
A We have five offices.
Q And where are they located?
A We have an office in Philadelphia, San Francisco, Chicago, Denver and Atlanta.
Q You testified to a certain budget for CCCO; is that correct?
A That's correct.
Q And you testified that approximately two-thirds of that budget was for the purpose of distributing material to military personnel?
A For the purpose—for the purpose of well, providing GI's with information about rights and discharges.
Q All right. And that budget is the national budget and that's the national percentage or costs informing GI's of their rights; correct?
A That's correct.
Q And can you tell me how many military bases you attempt to provide information to throughout the country?
A Well, we are, of course, trying to reach all military bases. We—you mean how many have we actually made major efforts on? Actually, very few.
[43] Q In other words, your testimony is that you are trying to reach soldiers on all military bases throughout the country and abroad?
A Eventually we would hope to do that with our material, yes.
Q Right. So that the budget of two hundred and some thousand dollars is not directed towards your Fort Dix campaign but is directed to all military bases; correct?
A That's correct.
Q How long have you worked for CCCO?
A A little less than two years.

Q Can you tell me how many times you worked for Mr.—withdraw it. You work with Mr. Ginaven; correct?
A I work—
Q With Mr. Ginaven?
A Yes, I do.
Q Can you tell me how many times Mr. Ginaven to your knowledge went to Fort Dix to distribute leaflets in connection with this work of the CCCO?
A The only time he went he was barred.
Q Just this one time?
A Yes. He's been unable to go back.
Q Right. And he never went before then; right?
[44] A No.
Q Did you distribute any leaflets on the day Mr. Ginaven was barred?
A No. I went for the purpose of serving as legal counsel.
Q Did you have more than Mr. Ginaven and Misch at Fort Dix on that day which was in August, 1972?
A There was one other person from the office in Wrightstown that day, yes.
Q Was that person distributing leaflets?
A No. He was—he was—he had simply driven us on the base. He may have—I believe he did distribute some leaflets in town that day, but—
Q In town that day?
A Yeah.
Q In Wrightstown?
A Yes.
Q And there are a large number of soldiers that come to Wrightstown; isn't that correct?
A Only—my experience has been only a handful when you look at the total number of GI's on Fort Dix.
Q Do you have a branch office in Wrightstown?
A No, we don't.
[45] Q You don't have a store front there?
A No.
Q Have you ever considered that?
A Yes, we have.

Q Did any representatives of your organization attempt to distribute leaflets in Wrightstown prior to the time when Mr. Ginaven and Mr. Misch were barred?
A There had been people there—
Q People from your organization distributing leaflets?
A Not to my knowledge.
Q So we are talking about a one shot effort by your organization to distribute leaflets through the effort of Mr. Ginaven and Mr. Misch; is that correct?
A At Fort Dix.
Q At Fort Dix, right.
MR. HILL: No further questions.
MR. KAIRYS: You may step down.
THE COURT: You may step down. Thank you, sir. You may step down.

(Witness excused.)

[46] MR. KAIRYS: May we continue, your Honor?
THE COURT: You may.
MR. KAIRYS: Mr. Seigle.

LARRY SEIGLE, called as a witness on behalf of the plaintiffs, being first duly affirmed, testified as follows:

MR. HILL: Your Honor, I have an initial objection to any testimony by this witness. Let me state the grounds for that. On September 8th, 1972 Interrogatories were filed in this matter.

Question 3 of those Interrogatories stated: "State the names and address of all persons having knowledge of facts relative to this litigation"—standard question in interrogatories.

Mr. Seigle's name is not disclosed in Answers to Interrogatories, and I object to any testimony on his behalf.

THE COURT: I'll allow it and look into the matter.

MR. KAIRYS: Your Honor, that was answered specifically that there were many people who had knowledge of the incident that [47] took place as a result of the preliminary injunction, and I said specifically that I'm not putting it down so that they have access to people as well as I do.

MR. HILL: That was not said, your Honor.

THE COURT: All right. Let's go.

DIRECT EXAMINATION
BY MR. KAIRYS:

Q What's your position now, Mr. Seigle? Where do you live?
A I work for the Militant Newspaper.
Q And up to—
THE COURT: Which newspaper?
THE WITNESS: The Militant.
THE COURT: The Militant. Would you keep your voice up, please.
Q Up to the election, what was your position?
A I was the national campaign manager for the Socialist Workers Party.
Q Okay. Now, in that capacity, could you tell his Honor, please, the cost or the value, the amount of money that was spent on the campaign of the Socialist Workers Party candidates for president and vice president?
A The National—
[48] MR. HILL: Your Honor, I have a continuing objection to the testimony.
THE COURT: Overruled. Go ahead.
A The National Campaign Committee spent approximately one hundred ninety thousand dollars in the course of the campaign.
Q Do you know what the president's salary is?
A I'm not sure. I believe it's—
MR. HILL: It's a matter of record, I would think.
THE COURT: It's a little more than mine.
MR. KAIRYS: I believe it's approximately a hundred fifty or two hundred thousand. I am not sure.
MR. HILL: Your Honor, for the record, may I ask what this line of questioning is directed toward? Is this a jurisdiction question?
MR. KAIRYS: Yes.
The Court again said it's not the extent of the infringement, but the value of the campaign that the infringement hindered.
THE COURT: I read the opinion several times.
[49] MR. KAIRYS: Okay.

Q All right. Now, did your supervisor have a part in supervising the distribution of leaflets on Fort Dix to announce the rally that took place as a result of this Court Order?

A Yes, I did.

Q Okay. How many leaflets were distributed to soldiers on the base?

A Almost ten thousand.

Q And what was the reception that the distributors got from the soldiers?

MR. HILL: Your Honor, I object to that question. He clearly is uncompetent to testify as to the reception.

THE COURT: It may go to the weight of it, but I'll allow it. Go ahead.

A The G.I.'s were pleased that Dr. Spock was going to be allowed to speak. Many of them have heard of him. Many have also heard of the other candidate. Many of them, even though they weren't supporting either of those candidates, thought it was a good idea to allow such a thing to take place. And general response was one of friendliness and greeting the rally with some enthusiasm.

THE COURT: How many attended?

THE WITNESS: There were about two [50] hundred people at the rally.

THE COURT: How many were from the outside?

THE WITNESS: Maybe sixty or seventy-five.

Q To your knowledge, was there any trouble during the time when leaflets were distributed between leafletors and any soldiers?

A No. There was no trouble.

Q And was there any trouble at the rally?

A None whatsoever.

Q Now, Mr. Seigle, I want to present you with Plaintiff's Exhibits 12A through 17A. Could you describe to the Court what this depicts and if they are an honest depiction, and describe your presence in any of these scenes.

MR. KAIRYS: You have no objection to these; is that right?

MR. HILL: I have no objection to those exhibits, your Honor.

THE COURT: Why don't you hand them to me?

MR. KAIRYS: Okay. These are all pictures of the rally, your Honor.

That first one, that's Judy Collins [51] singing to the group. A little bonus.

THE COURT: All right. Mark them. I have no inquiry on them.

MR. KAIRYS: Okay.

THE CLERK: 12A through 17A in evidence.

Q Now, Mr. Seigle, is the Socialist Workers Party still conducting campaigns now?

A Yes, we are. We're right now conducting a number of municipal campaigns, and we're preparing for statewide races next year.

Q And is it an on-going political party at this time?

A Yes, it is.

Q Okay. And what are the desires of the party with regard to Fort Dix?

If we are granted an injunction today, giving you the right to leaflet, what does the party intend to do?

MR. HILL: I have an objection. I don't know how this witness can know what the intentions of the party are at this time since he stated in his own testimony that he hasn't been affiliated with the party at least in leadership position since the election.

THE COURT: Campaign manager last [52] election. Are you taking part in this campaign?

THE WITNESS: Yes, I am.

THE COURT: In what capacity?

THE WITNESS: I am part of a committee that is managing those campaigns.

THE COURT: All right. I'll allow it.

A We would like to be able to do what we wanted to do all along, that is, to visit Fort Dix, to talk to the G.I.'s, to speak at meetings there, to pass out leaflets expressing the views of the part.

MR. KAIRYS: We have nothing further.

THE COURT: Cross.

CROSS EXAMINATION
BY MR. HILL:

Q Mr. Seigle, you personally attended the rally; didn't you?
A Yes, I did.
Q And you were present most of the time in the parking lot adjacent to the theater where the rally was held?
A Yes.
Q And how many soldiers did you say attended that rally?
[53] A I think there were some, were more than a hundred G.I.'s.
Q More than a hundred G.I.'s?
A Yes.
Q And those G.I.'s that were in uniform; were they not?
A No. I think most of the G.I.'s there were not in uniform.
Q Can you tell the Court how you know the people that were not in uniform were or were not G.I.'s?
A Well, generally, those who are G.I.'s have short-cropped hair and relatively clean shaven, and the other civilians there had more hair on their face.
Q There were, however, soldiers there in uniform; were there not?
A Yes, there were.
Q And how many soldiers in uniform did you see?
A Maybe thirty or forty.
Q Thirty or forty in uniform?
A I think so.
Q And these soldiers—I withdraw that. Your organization handed out at that rally various literature; did you not?
A Yes, we did.
Q And you handed out campaign placards; didn't you?
[54-55] A Yes.

Q And by "campaign placards," I mean placards that can be held in your hand and the people are supposed to hold at the time of the rally to show support?
A They can be held, yes.
Q And didn't people at the rally display those placards and show support for you by displaying at the rally?
A Some of the soldiers there who were supporters of the Socialist Workers Party did hold those signs.
Q In other words, they were soldiers in uniform holding those placards in support of your rally; isn't that correct?
A Yes.
Q And wasn't it also true that there were soldiers in uniform that had campaign buttons on their uniform?
A I'm not sure about that.
Q How long have you worked for the Militant?
A Since the November 7th elections.
Q Did you have any association with the Militant prior to that time?
A I wrote articles for it.
Q What is your association or—in what capacity have you associated with the Militant at this time?
A I'm a member of the editorial staff.
[56] Q Since you became a member of the editorial staff of the Militant, have you made any effort to have the Militant distributed on Fort Dix?
A No, I have not.
Q How long have you been knowledgeable with respect to the Militant's affairs?
A Well, could you be more specific?
Q How long have you been aware of the existence of the Militant?
A For about eight years, nine years.
Q How long have you known people that run the Militant in some sort of an executive capacity or decision making capacity?
A Several years.
Q To your knowledge, has the Militant ever made a request to have its newspaper sold at Fort Dix?
A Not to my knowledge.

Q And to your knowledge, the Militant, any request that it be sold has never been rejected by the command at Fort Dix; have they?

A Well, no such request has been made.

MR. HILL: thank you. That's all.

REDIRECT EXAMINATION
BY MR. KAIRYS:

Q You did or your candidates made a request to [57] come to Fort Dix; did they not, to speak?

A Yes.

Q And what happened to that request?

A It was refused.

Q And didn't they also ask to distribute literature on their behalf when they wanted to come to Fort Dix?

A Yes, they did.

Q And what happened to that request?

A It was refused.

MR. KAIRYS: Nothing further.

THE COURT: Thank you. You may step down.

(Witness excused.)

[58] MR. KAIRYS: This will be our last witness, your Honor. Alan Hardy.

ALAN EADS HARDY, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KAIRYS:

Q Mr. Hardy, you are a plaintiff in this suit, are you not?

A That's correct.

Q Where do you work now?

A I work for the Bach Mai Fund Resource Center.

Q What is that?

A It's a part of the national campaign by the medical aid for Indo-China to raise three million dollars to replace the Bach Mai Hospital in Hanoi that was

destroyed during the December 19 and 22 bombings on that city.

Q That's this past December?

A This past December, 1972.

Q Are you also still working for Philadelphia Resistance as you were when the suit was filed?

A I'm still associated with Resistance, yes.

Q And is this work for the Bach Mai Hospital part of your Resistance work also?

A It complements the Resistance work.

[59] Q Now, as a staff member of Resistance, could you estimate for the Court the value in money terms of Philadelphia's Resistance Campaign to end the war?

MR. HILL: Your Honor, I would like to note my objection to this line of questioning.

THE COURT: All right. Overruled. We understand you position.

A Philadelphia Resistance spends approximately twenty-five thousand dollars a year as its total budget. I can't estimate the exact percentages which would be devoted to military work, but working with the military and particularly with Fort Dix and McGuire Air Force Base has been a significant part of our work for the full time that Resistance has existed, which has been the past six years.

Q And is all of it devoted to anti-war work of some form?

A Most of it, yes.

Q Okay. If you are granted an injunction today, or whenever the Court might resolve this case, what would intend to do? Would you go back to the Base?

A Yes, I would, for several reasons: One purpose would be to attempt to reach the G.I.'s with the present information about the Bach Mai Hospital and our fund [60] raising campaign. In working with the Vietnam Veterans against the war, and with a number of active duty G.I.'s. I've come into contact with in my work with Resistance, I found a significant amount of sympathetic response to information concerning destruction that has happened as a result of the U.S. participation in the war in Indo-China.

I would also go back as a part of the continuing effort by Resistance to reach servicemen with information concerning discharges, conscientious objection and other means by which servicemen can be informed of their rights and can exert their legal rights in relating to the Armed Forces.

Q And how about the war?

A Well, it's the position of Resistance and my own personal position that the issue of the war in Indo-China is not a dead issue. The war has reached a stage of truth, but there is no peace treaty. There is no certainty in my mind that the United States is out of there for good. There are troops in both Thailand and the Gulf of Tonkin which could be easily re-introduced into some active role there, so anti-war activity among G.I.'s is still, in my opinion, and in the opinion of Resistance, an important aspect of our work in something that we would need to continue.

[61] MR. KAIRYS: Cross examine.

CROSS EXAMINATION
BY MR. HILL:

Q How long have you been associated with the Philadelphia—is it the Philadelphia Resistance Committee?

A It's Philadelphia Resistance.

Q How long have you been affiliated with that organization?

A For slightly over four years, about four and a half years.

Q Does that committee have a store front or an office in Wrightstown?

A Resistance has not itself had a store front. However, we have participated as part of this staff with other groups that have maintained store front and offices in Wrightstown, yes.

Q Now, what was the date that you were barred from distributing literature at Fort Dix?

A February 25, 1972.

Q Was that the first time you distributed literature on the Post?

A No, it was not.

Q How many other times have you distributed literature?

[62] A I believe only one other time that I had—I personally had distributed literature on the Post?

Q Yes. And when was that?

A In October of 1971.

Q Subsequent to your being issued a bar order by the personnel of Fort Dix, would you please tell the Court whether or not you went back to the military subsequent to that date and asked that the bar order be rescinded?

A I have not personally been back, but Mr. Kairys has been acting for me in attempting to get that bar order rescinded in this case.

Q Was the complaint that you filed in this litigation the first step that you took subsequent to your being barred to attempt to get back on the Fort to distribute leaflets?

A Yes.

MR. HILL: No further questions, your Honor.

MR. KAIRYS: That's all.

THE COURT: You may step down, sir.

(Witness excused.)

MR. KAIRYS: That's the Plaintiff's case, your Honor. We rest.

MR. HILL: Your Honor, at this point [63] in time the defendants have a motion pursuant to Rule 41 of the Federal Rules of Procedure for Judgment of Dismissal on the grounds that upon the facts that none of the plaintiffs have shown themselves that they are entitled to relief.

Now, would you prefer argument to be had at this time?

THE COURT. On jurisdictional grounds?

MR. HILL: Not only on jurisdictional grounds, but also on the merits of the case, on the defenses that have been presented in the Answer, on the grounds set forth

in our motion for dismissal. I can make a rather full argument—

THE COURT: Right now I'll take it under advisement. Proceed with your evidence and we will see what time we have left over.

MR. HILL: Very good. This is not without prejudice. This is—

THE COURT: Now, I understand, I am just reserving decision.

MR. HILL: All right. Fine.

[64] MR. HILL: At this time, your Honor, the defense will first call Colonel Vincent Olsen.

VINCENT IRVING OLSEN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. HILL:

Q Colonel, would you please state your rank to the Court?

A Colonel.

Q How many years have you been in the military?

A Twenty-eight plus six. Twenty-eight years and six months.

Q Are you currently stationed at Fort Dix?

A I am.

Q How long have you been stationed at Fort Dix?

A For a period of eighteen months.

Q What is your assignment at Fort Dix?

A I am the Provost Marshal.

Q Now, Colonel, I direct your attention to November 4, 1972, which was the date that Dr. Spock and several of the other candidates visited Fort Dix. Can you tell me where the rally was scheduled to be [65] held?

A Yes. The rally was scheduled to be held—that would be the east side of Theater V.

Q What were your responsibilities in connection with the rally?

A The maintenance of law and order, protection of Dr. Spock.

Q What day of the week was the rally scheduled for?

A A Saturday.

Q How were the hours set for the rally?

A I believe the hours were from 1:30 to 4:30 in the afternoon—four o'clock in the afternoon.

Q Were representatives of Dr. Spock present prior to 1:30?

A Yes.

Q And did you have people on duty prior to 1:30?

A Yes, I did.

Q On a normal Saturday, on any given shift, would you tell me how many M.P.'s you have on duty?

A Well, normally we would have between five to eight patrols, which would be sixteen people and four on the deck. It would run, average, between fourteen and sixteen people on assignment.

[66] Q And on a normal Saturday per shift, how many vehicles are employed by those fourteen to sixteen M.P.'s?

A Oh, seven to eight vehicles.

THE COURT: How many, sir?

THE WITNESS: Seven to eight, seven or eight. It depends on the number of personnel available.

Q Now, directing your attention to November 4, 1972, would you please tell me how many additional members of the Military Police were assigned to duty?

A Approximately sixty to sixty-five.

Q And what time did these additional personnel come on duty?

A Ten o'clock in the morning till about four-thirty in the afternoon.

Q Would you please the court a break-down as to how these men were assigned, these additional men were assigned?

A Yes. We had a stand-by force of, I believe it was, thirty-three enlisted men and two officers. We had one, two, three—three two-man patrols at each of the

main gates. There was also an escort vehicle. I had eight military police investigators present, too, CID agents, there was myself, my [67] operations officer, my driver, traffic escort officer, assistant operations officer, I had five, six MP's on traffic patrol. That was at the site of the rally and also at the main PX.

Q To your knowledge, other than additional military police forces, were there other military men assigned to duty on that Saturday who would not otherwise have been on duty Saturday?

A Yes. We had a stand-by ambulance with personnel. PIO was out. And then there were, oh, unit commanders of personnel involved. They were out also.

Q Would you explain to the Court what PIO means, please?

A Public Information Officer.

Q Would you tell the court how many additional vehicles were employed on that Saturday?

A I would say between eight and nine.

Q What kind of vehicles were these?

A Some were military police vehicles and—these are the vehicles that are marked. And we had some jeeps, and we also had unmarked military police vehicles that were used by the criminal investigators and also the military police investigators.

Q Your judgment was the assignment of the [68] additional military police officers reasonably necessary to enable you to perform your duties?

A Yes, sir.

Q Were you present at the parking lot adjacent to Theater V during the time of the rally?

A Yes, I was.

Q Did you observe the crowd at the rally?

A Yes, I did.

Q Can you tell me the size of the crowd?

A About approximately 150 people.

Q Where did the speakers speak from?

A They spoke from a flat bed, a flat bed truck.

Q Was a sound amplifiers system used?

A Yes.

Q Did you observe whether soldiers attended the rally?

A Yes, there were soldiers there.

Q Were there soldiers in uniform attending the rally?

A Yes.

Q Did you observe any soldiers wearing campaign buttons?

A No. That I don't recall. They may have been, but I don't recall. I believe—I'm a little [69] confused at whether it was this rally or other rallies, but I recall seeing campaign buttons. I can't recall at this specific one.

Q To your recollection were any representatives of the Judge Advocate General's Corps on duty when Dr. Spock came?

A Yes, there were.

Q How many? Do you recall?

A I know of two of them there that I personally know.

MR. HILL: I have no further questions of this witness.

[70] THE COURT: Cross.

CROSS EXAMINATION
BY MR. KAIRYS:

Q Did those sixty to sixty-five people—is that the right number?

A Approximately, yes.

Q Did they have to do anything in fact except sit there?

A Yes, sir. There was some directing traffic. There was escort vehicles to bring the people on the Post.

Q Did you bring Dr. Spock on the Post?

A Also the buses that arrived—there was a bus that arrived. We escorted them.

Q Well, sixty to sixty-five people weren't necessary for that?

A Thirty to thirty-five were in stand-by reserve.

Q Did you need them?

A Yes, sir.

Q In fact, did you need them?
A I mean—
THE COURT: Were they used, he wants to know.
THE WITNESS: They were not used, no, sir.
Q Was there any trouble?
A None that I recall.
[71] Q It was a pretty pleasant atmosphere; wasn't it?
A Well, it was cold out.
Q I am not referring to the temperature.
A As far as being pleasant, I don't think the M.P.'s liked working that day. It wasn't pleasant to them.
THE COURT: There were no disturbances; were there?
THE WITNESS: None whatsoever.
Q Okay. What other rallies would there have been that you might have seen campaign buttons at?
A Well, I used the term wrong. Rather than rallies, I should have said demonstrations.
Q I see.
MR. KAIRYS: Okay. We have nothing further.
MR. HILL: One further questions, Your Honor.

REDIRECT EXAMINATION
BY MR. HILL:

Q Colonel Olsen, you testified there was no trouble; is that correct?
A That's correct.
Q By that you mean there was no fights, no [72] violence?
A That is correct.
Q At the conclusion of the rally adjacent to Theater 5, where did Dr. Spock go at that time?
A Dr. Spock departed and went to the main PX area.
Q And what did he do at the main PX area?
A He attempted to get into the main PX.
Q Did he have campaign literature with him?
A Yes, he was carrying it.
Q Was he permitted to enter the main PX?
A No, he was not.

Q And why was he not permitted? Was he carded? Did he have a card, an identification card?
A He did not have an identification card and you are only authorized in there if you do have an identification card.
MR. HILL: No other questions.

RECROSS EXAMINATION
BY MR. KAIRYS:

Q Did you ask him if he intended to distribute anything?
A No, I didn't ask him his identity, but he was carrying campaign literature.
Q They had a bundle of literature that was used [73] at the rally?
A Yes, sir.
Q And then they went into the cafeteria; did they not?
A After the main PX they went into the cafeteria, yes.
Q With me?
A Yes. I was there.
Q Okay. I remember. And we had lunch?
A Yes.
Q And did he distribute anything in the cafeteria?
A I don't recall whether he did or not, but I do recall him talking to a young soldier who came up to Dr. Spock and interrupted him while he was eating, and I believe at that time Dr. Spock did hand campaign literature to that soldier.
Q Okay. That's not so, but—
A He handed him something. As he shook his hand, he handed him a paper.
Q The soldier came up to Dr. Spock?
A That is correct.
Q That cafeteria is open to the public. He has every right to eat there; doesn't he?
A Yes, definitely.
Q And it's on the Post?
[74] A That is correct.

MR. KAIRYS: Okay. Nothing further.
MR. HILL: That's all, Colonel.

(Witness excused.)

MR. HILL: Major Beattie.

DONALD G. BEATTIE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

BY MR. HILL:

Q Major, how long have you been in the military?
A Approximately sixteen years.
Q Where are you assigned?
A As the Deputy Provost Marshal at Fort Dix.
Q Were you so assigned on November 4, the date Dr. Spock came?
A Yes, I was.
Q And what are your responsibilities as the Deputy Provost Marshal?
A Well, I am primarily the administrative assistant to Colonel Olsen.
Q Major, did you have occasion to break down by rank the additional personnel that were utilized by the military police in conjunction with Dr. Spock's visit?
A Yes.
MR. HILL: Can I have this marked [75] for identification, please.
THE CLERK: D-1A marked for identification.
MR. KAIRYS: Let me see it, please.

BY MR. HILL:

Q Major, I show you defendant's Exhibit D-1A, and I ask you if you can identify this document and describe it to the Court, please.
A Yes. This is an DA 2496, which is a disposition from which essentially lists the people who were on other than normal duty on the day of Dr. Spock's visit to Fort Dix.

Q What's the total number of people you have listed there?
A Ten officers and forty-four enlisted men.
Q And are these persons broken down by rank?
A Yes, they are.
MR. HILL: I ask that this be admitted into evidence, your Honor.
THE COURT: Any objection?
MR. KAIRYS: Your Honor, we have been allowing this train of thought to go along. I assume that Mr. Hill is trying to show that there were extra people on duty. We'll stipulate to that. I don't think it has to go [76] much further.
THE COURT: We'll take it as long as he has it.
MR. KAIRYS: I have no objection. I don't think it proves anything relative to the case though.
THE CLERK: D-1A is marked in evidence.
MR. HILL: Your Honor, I have no further questions of this witness.
THE COURT: Any questions?
MR. KAIRYS: None.
THE COURT: Thank you, Major. You may step down.
THE COURT: Thank you.

(Witness excused.)

[77] MR. HILL: Defense counsel calls Jasper Williams.

JASPER WILLIAMS, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. HILL:

Q Mr. Williams, by whom are you employed?
A The Department of the Army.
Q Where are you located?
A Fort Dix.

Q And what's your assignment at Fort Dix?
A I'm employed as Systems Accountant.
Q Does that involve cost accounting?
A Yes, it does.
MR. KAIRYS: We will stipulate that he can present his figures.
THE COURT: All right. Do you have some figures?
MR. HILL: Yes. May I have this marked for identification.
THE CLERK: D-2A for identification.
Q Mr. Williams, did you have occasion to compute the labor costs of the additional military police utilized in connection with Dr. Spock's visit?
A Yes, I did.
[78] Q And what was the basis of your computation of this cost?
A The basis was a schedule which is published by the Department of the Army listing the rank by rate and the daily rate.
Q I show you defendant's Exhibit 2A for identification and ask if you can identify it?
A Yes, this is the schedule that I used.
MR. HILL: Mr. Kairys has no objection, your Honor.
THE COURT: Mark it.

(D-2A marked in evidence.)

BY MR. HILL:

Q Mr. Williams, in computing this labor cost, how many hours did you allow for each person used?
A Six hours.
Q Six hours. Mr. Williams, I show you defendant's Exhibit D-1A in evidence and ask if you have seen that before?
A Yes, I have seen it.
Q Utilizing the information provided in Exhibit D-1A in evidence and D-2A in evidence, did you have occasion to compute the total labor cost for additional military personnel used in conjunction with Dr. Spock's visit?
[79] A Yes, I did.

Q Do you have that in written form or do you have it just in your head?
A I have it on paper, but it's really not valid for evidence because the actual computation is not shown, only the figures.
MR. HILL: Can I have this marked for identification, please.

(D-3A marked for identification.)

Q Mr. Williams, I show you an exhibit that's been marked D-3A for identification, and it appears, upon examining D-3A, that is exactly the same as D-1A in evidence except that you have made certain markings in pen on that form; is that true?
A That's true.
Q Would you please explain opposite the numerals 06 on D-3A in evidence?
A That's the manpower cost consumed during those six hours.
Q By whom?
A Dr. Spock.
Q Whose manpower?
A By the colonel. That's the colonel.
Q That's one colonel for six hours?
A Right.
[80] Q And you have similar figures after the figures 05, 04, 03, 02?
A Yes.
Q And those similarly constitute the manpower costs of these officers?
A Yes.
THE COURT: And so forth down through the ranks?
THE WITNESS: Yes.
THE COURT: All right. Do you object?
MR. KAIRYS: No.
THE COURT: Mark it.

BY MR. HILL:

Q Did you have occasion to total these?
A Yes.

Q What's the total cost?
A Eleven hundred forty-three dollars and fifty cents.
THE COURT: How much, sir?
THE WITNESS: $1,143.50.
MR. KAIRYS: They couldn't get jurisdiction, your Honor.

(Exhibit marked D-3A in evidence.)

MR. HILL: I have no further questions of this witness.

[81] CROSS EXAMINATION
BY MR. KAIRYS:

Q Does the Army pay over time?
A No, it does not.
Q So for instance, Colonel Olsen—I'm just making this up—if he made ten thousand dollars, he didn't get ten thousand plus a certain amount because he was there that day?
A (Shakes head.)
Q So it really didn't cost the Army anything?
A Yes, it did.
Q Why?
A Because the cost is based on the forty-hour work week.
Q But the Army did not pay out any extra money in salary to any of the—
A But still the cost is based on the forty hour work week.
Q I understand that. You've got an estimate of how much each hour of their work costs. The only real cost is perhaps they couldn't be doing something else that may be they might have done with that time, like going to a movie or something like that, since it was off hours. It wouldn't have been Army time, anyway, but you did not shell out extra money, for instance, to [82] Colonel Olsen because he was there that day?
A Well, I'm not involved in the distribution of pay. I simply compute the rates.

Q Well, did you give Colonel Olsen—what's the amount for him on that exhibit?
MR. KAIRYS: We might have some money owed to you.
Q You've got next to Colonel Olsen's name Seventy-two dollars and twenty-five cents. Was a check issued to him for that amount?
A No, it was not, but that is the amount costed to the Government by the visit of Dr. Spock. That cost had to be distributed somewhere.
Q But the out of pocket extra expense over usual salaries that would be paid anyway was nothing?
A If you are to look at it that way.
Q I do. Now, are you a cost analyst or analyst?
A No, a systems accountant.
Q You are a systems accountant. Did you do any kind of analysis of the breakdown they made to decide whether or not it was necessary to have that many people on duty?
A No, because that is not part of my job.
Q You didn't analyze that?
[83] MR. KAIRYS: Okay. I have nothing further.
THE COURT: Thank you, Mr. Williams.

(Witness excused.)

MR. HILL: Defendants call Richard Janes.

RICHARD O. JANES, Called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. HILL:

Q Mr. Janes, by whom are you employed?
A I'm employed by the Army and Air Force Exchange Service.
Q How long have you been employed by that service?
A Twenty-three years.
Q Would you tell the Court what that service is?

A It is the military exchange service which provides articles of convenience and necessity and services to the Armed Force of the United States.

Q What's your particular duty with the exchange service?

A At the present time I'm assigned as general manager of the Dix-McGuire Consolidated Exchange.

[84] Q Are you familiar with the manner in which the exchange service attains its newspapers and magazines for distribution?

A Yes, I am.

Q And would you please describe the procedure by which newspapers and magazines are procured?

A We, for the most part, our buying office will contract with a news distribution agency to provide paperback books, newspapers, magazines, for resale through our exchanges to our customers, to authorized customers.

Q Is it also possible in some instances to have direct delivery of newspapers to the homes of soldiers on the Post?

A Yes, this is permitted. If someone lives on Post and desires delivery of a periodical to their home, they may do so by contacting the circulation manager of this periodical.

Q Does the exchange service as a general basis specify the names of the newspapers and magazines that are purchased and distributed through the exchange service facility?

A No, we do not.

Q Is it the distributor that makes collection?

A Yes. We assign a certain amount of space in [85] a particular store, and then we permit that distributor then to use that space to display and sell magazines, newspapers and paperback books.

Q Does the exchange service censor any of the material that is offered for sale.

A We do not.

MR. HILL: May I have this marked for identification, please.

THE CLERK: D-4A for identification.

Q Mr. Janes, I show you D-4A for identification and ask you if you can identify this?

A This is an exchange service bulletin which relates to the procurement and sale of unsuitable and/or offensive material exchange.

Q Is that a true copy of the original bulletin that you received?

A Yes, it is.

Q Does that Bulletin permit you to censor any material that's offered for sale?

A It does not.

MR. HILL: I offer this into evidence.

MR. KAIRYS: No, no objection.

THE COURT: Mark it.

THE CLERK: D-4A marked in evidence.

Q Mr. Janes, if the publisher of a newspaper or a magazine, that wasn't currently being distributed on [86] Fort Dix, wanted that magazine or newspaper to be distributed on Fort Dix, how would you go about having it distributed?

A Well, he would have—his first choice would be to go to the news agency which had a contract with us and see whether or not they would be willing to purvey that magazine or periodical, whatever it was. If they were not interested and he felt that he wanted to sell this item to the exchange for resale to the customers, he would then have to go through our buying office and our exchange regional headquarters in Cameron Station, Virginia, and attempt to sell it to the buyer down there for that particular commodity.

Q How long have you been at Fort Dix?

A I've been at Fort Dix for approximately three years.

Q Since you have been in Fort Dix, have there been any inquiries from any magazines or newspapers that weren't being distributed on base with respect to being distributed?

A To the best of my memory, there is only one. I believe it was Overseas Weekly, which is a newspaper, and they had previously not published it in the United States, and they decided apparently to start publishing

in the United States. So they came to us and asked us how they [87] would go about it, and we indicated that they could go to our news agency, if he was willing to handle it, or if they wanted to go on national distribution or local distribution, depending, and their intent was to go national throughout the entire Country, so we recommended to our headquarters, Army and Air Force exchange in Dallas, Texas.

As a result of their inquiry, they retained a national contract to vend their paper through vending machines on Post, throughout the country and they also now distribute their paper through the news agency which is under contract.

Q Since you have been at Fort Dix, has there ever been an occasion when a newspaper went to the exchange service and asked that this particular newspaper be distributed, was there ever an occasion when it was turned down, a newspaper was turned down in its effort to be distributed on base?

A Not to my knowledge.

Q As general manager of the exchange service, have you ever prohibited the distribution of any newspaper or magazine because you didn't agree with the content?

A Absolutely not.

Q Since you have been at Fort Dix, has the command—by the "command" I mean General David or any [88] of his predecessors or any officers acting under him—told you not to sell any issue of any newspaper or magazine or not to distribute any item or literature?

A No.

Q Would you tell the Court what people are privileged or hold the privilege of buying at the Post Exchange?

A Well, the Post Exchange, as a nonproprietary agency of the Department of the Defense, its mission is to serve the Armed Force and their dependents.

So all of the activities which we have opposed are restricted to their use with the exception of food activities. Post exchanges which are military resale stores, service stations, concession and contracted services, such

as barber shops, and so on and so forth are specifically for the use of active duty military and their dependents and/or honorably retired personnel.

Now, the food activities, since there are no restaurant facilities on Post, the installation commander is authorized to allow visitors to the Post to use the food activities on Post which is the case at Fort Dix.

MR. HILL: No further questions.

[89] CROSS EXAMINATION
BY MR. KAIRYS:

Q You were shown this Defendant's Exhibit 4A and you said it doesn't contain any censorship, is that right?

A That's correct.

Q Would you read paragraph six?

MR. HILL: Your Honor, he didn't say it didn't contain any censorship.

MR. KAIRYS: Well, he said—

THE COURT: Let me hear it. It's in evidence.

A "Items which the installation commander officially determines to be unsuitable for sale in the exchange will be removed from sale. Positive action by AAFEF purchasing activities to discontinue procurement of such items."

Q Now, what does that sound like?

A That sounds like if the installation commander tells me to take something out of sale, I will do so.

Q "Unsuitable." What does that mean?

A I have no idea.

Q Are you telling me that any publication can be sold in the exchange of the Post or are you just setting out the usual procedures?

Let me give you an example to make that [90] more concrete. The Militant, which I think you just heard Mr. Seigle testified is a Socialist newspaper. It's very much against policies of the military right now. It's something very likely that the commander of the base would disagree with wholeheartedly—

MR. HILL: Your Honor, I object to that characterization.

Q Could we sell that on the base?
A As far as I know you could.
Q In the Post Exchange?
A I see no reason not to.
Q How about that regulation right there?

THE COURT: Well, I think you are arguing. What he has told me is he doesn't know how they do it, and he's never seen one turned down. I mean it's obvious to me from the previous hearing that this is contrary to the military mission, violation of those regulations; they probably would not.

MR. KAIRYS: Right. I was going to refer to earlier testimony on that. They already said they won't let it on the Base if they don't like the contents. I have nothing further.

MR. HILL: I just want to make one comment about that, the most recent characteriz- [91] ation. The only military regulation involves, say, that the military commander, after he submits the material to the Department of the Defense in Washington, can prohibit the distribution of the publication. If there is a finding that it presents a clear danger to the loyalty, discipline and morale of the soldiers, which is quite a specific test, there is no regulation, and there has never been any testimony in this case saying that an item cannot be distributed simply because the commanding officer doesn't like what it has to say.

As a matter of fact, regulation that have been presented heretofore to this court indicate that the personal preference of the commander doesn't make a difference, and even if it happens to criticize the United States.

THE COURT: All right. Are you done with this witness?

MR. HILL: Yes, I am, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Do you have anymore?

MR. HILL: Yes, your Honor. This will [92] involve putting in quite a number of photographs. Do you wish us to mark them?

THE COURT: Why don't you do that. We will pick up at 2 o'clock.

MR. HILL: Okay.

(Luncheon recess.)

(Defendant's exhibits D-5A through D-36A were marked for identification during the recess.)

[93] MR. HILL: Your Honor, the defendants call Louis Greco.

LOUIS J. GRECO, called as a witness on behalf of the defendants, being first duly sworn testified as follows:

MR. KAIRYS: Your Honor, we have looked through these pictures and we have no objection to them.

THE COURT: Do you need him at all?

MR. HILL: Yes. I just want to describe where some of the pictures were taken.

THE COURT: Okay.

DIRECT EXAMINATION
BY MR. HILL:

Q Captain, where are you stationed?
A At Fort Dix, New Jersey.
Q And you are a Captain in the United States Army?
A Yes, sir.
Q And you are a member of JAG?
A Judge Advocate's General Corps. That's correct.
Q Are you assigned to JAG at Fort Dix?
A Yes, sir, I am.
Q Did you cause a series of pictures to be taken essentially adjacent to the entrances of Fort Dix, New Jersey?
A Yes, I did.

[94] Q Were you present when the pictures were taken?
A Yes, I was.
Q When were the pictures taken?
A 20th of November, 1972.

Q Captain, I show you a series of pictures that have been marked 5A for identification through 15A for identification, and I would ask that you describe to the Court each picture as to where it was taken and generally what it depicts.

A Exhibit 5A for identification is a picture looking along Highway 68 from outside the main gate or one of the main gates to Fort Dix. It was taken approximately oh, 50 to 75 yards outside the Post and looking inward.

Q You can go one by one.

A Is that sufficient?

6A for identification is a road sign that's located on the right-hand sign posted to the view of incoming traffic on the right-hand side of Highway 68, approximately 50 yards inside that entranceway.

Q What's the general nature of that sign?

A Shall I read it?

Q Just generally, yes.

A Well, it says: "All vehicles are subject to search while on the Fort Dix military reservation." It [95] cites an Army regulation: "Soliciting prohibited unless approved by the commanding general" followed by the speed limit.

MR. KAIRYS: What number was that one?

THE WITNESS: That was 6A for identification.

A (Continuing) 7A for identification is a second road sign saying that streets and roads are patrolled by military police, and it is located approximately thirty or thirty-five yards beyond the sign depicted in 6A for identification.

8A for identification is yet another road sign noting that it says: "Stop one thousand yards Fort Dix information." And that's located another thirty or so yards beyond the second sign.

And the next 9A for identification is a sign pointing to the information booth a thousand yards down on the road giving its hours of operation 8 to 5 daily. It says: "After 5 contact military police building 5211."

10A for identification is a sign stating: "Streets and roads patrolled by military police." It is posted 75 or 80

yards inside the Wrightstown entrance to Fort Dix. I think it's called Fort Dix road.

11A for identification is the same [96] sign: "Streets and roads patrolled by military police" which is posted inside the Pointville Pemberton Road entrance next to the Garden Terrace Housing area about 70 or 80 yards inside the gate of the main gate of the Fort.

12A for identification is a road sign stating: "Housing area is off limits to all personnel except bonafide residents, guests and authorized vendors." This is posted adjacent to the Garden Town Housing area. This is not near an entrance. It is located next to the housing area.

13A for identification is that same sign posted on Saylor's Pond Road adjacent to another housing area on Post. This one is right on the perimeter line of Fort Dix.

By "same sign" you mean the same as this sign indicated in 12A for identification?

A Yes. Yes, the same as that.

14A for identification is that same depicted in 13A for identification and 12A for identification, posted at another housing area, the intersection of Juliustown Road and Pointville Road.

16A for identification is the same sign depicted in 6A for identification stating that all vehicles of Fort Dix are subject to search, and that [97] soliciting is prohibited without the permission of the commanding general. This one is posted at the main gate on Pemberton Road incoming from Pemberton, New Jersey, and it's about 75 or 80 yards inside that gate.

17A for identification is that sign depicted in 16A for identification, and it is posted on Juliustown Road in bound from Brownsville, New Jersey.

18A for identification is the same sign posted on Texas Avenue in bound from Browns Mills.

15A for identification is the sign reading: "Housing areas off limits to all personnel except bonafide residents, guests and authorized vendors," and that's posted again on Saylor's Pond Road adjacent to another housing area on Fort Dix. This is also right on the perimeter line of Fort Dix.

Q Now, do all the pictures that you've just identified, being, namely, 5A for identification through 15A for identification inclusive, faithfully and accurately depict what they purport to show?

A Yes, they do.

MR. HILL: I offer exhibits 5A through 15A inclusive into evidence.

MR. KAIRYS: No objection.

THE COURT: You have no objection?

Mark them.

[98] (5A through 18A received and marked in evidence.)

MR. KAIRYS: I'd just like to ask a couple of questions.

THE COURT: Sure.

CROSS EXAMINATION
BY MR. KAIRYS:

Q This is the one that says: "Stop one thousand yards Fort Dix information"?

A Right.

Q You don't have to stop; do you?

A I never do.

Q No one does unless—

A People who use that information booth.

Q Unless you happen to want information. There is no gate there or sentry or—

A There is no gate or sentry. Just in the information booth which is off the roadway.

Q Okay. So although it says "stop" it's not like a command that you must stop?

A I don't interpret it that way.

Q If you want information, stop?

A That's the way most people interpret it.

Q This is only one entrance. There are many other entrances that don't have signs like this; do they?

[99] A There are information stations at other entrances that are not manned. There is one at the Wrights-

town gate and one on Texas Avenue that have similar information areas.

Q You don't know if they have signs like this and whatnot?

A I'm not sure if they have that particular sign. I do know there is no personnel there.

MR. KAIRYS: Okay. That's all, your Honor.

MR. HILL: I just want to indicate I have been referring to exhibits 5A through 15A which in fact is 18A.

THE COURT: All right. You may step down.

(Witness excused.)

MR. HILL: Your Honor, various regulations, Department of Army Directives, Department of Army Regulations, Fort Dix Regulations and Orders have been marked for identification already. They have all been certified as true copies with the exception of one, which we did not have an opportunity to certify. Mr. Kairys indicated he has no objection to that being into evidence without certification.

[100] I offer exhibits 19A through 36A into evidence.

MR. KAIRYS: No objection.

THE COURT: Mark them.

(Defendant's Exhibits 19A through 36A received and marked in evidence.)

MR. HILL: Next, your Honor, the United States on September the 8th propounded and filed interrogatories—

MR. KAIRYS: It was the defendants—wasn't it? Not the United States.

MR. HILL: The defendants propounded interrogatories to the plaintiffs. With respect to those interrogatories was served on the United States, and at this time we would either like to read into the record the questions and the answers or have it stipulated that the questions and answers be deemed a part of the record of this proceeding, or the answers being admissions by the plaintiffs.

THE COURT: Do you have any problem with that?

MR. KAIRYS: No objection.

THE COURT: Why don't you give me a copy. Just mark it so I can be sure I have it [101] at hand. It should be in the file.

THE CLERK: It should be in the file.

THE COURT: That would be easier.

(Defendant's Exhibits D-37A received and marked in evidence.)

THE COURT: Any other testimony?

MR. HILL: I have no other testimony, your Honor.

[102] THE COURT: All right. Do you want to argue this? How much time do you need?

MR. HILL: Well, from the point of view of the United States, the United States, your Honor wants—the defendants—the United States, of course, has got motions to dismiss pending. It also has a motion for judgment pending pursuant to Rule 41.

I don't know whether your Honor at this point in the proceeding is going to request from all proposed findings of facts, conclusions of law based upon a copy of the transcript which we'll have to buy, which is probably the best course. If that is your Honor's desire, from the point of view of the United States as long as it is deemed that a timely motion is made pursuant to Rule 41 and a motion to dismiss previously filed is pending based on the findings of facts being made by you at a subsequent time, and on any supplemental briefs we want to submit, that's fine with the United States. We'll waive oral argument at this time.

[103] MR. KAIRYS: Your Honor, it's our position that the only issue really open at this time, since there really hasn't been any new evidence that contradicted anything that was other than already in the record on the preliminary injunction, has to do with jurisdiction. And I believe you already have—you have a new brief from them and you have our memo on jurisdiction. I've prepared and suggested final Order which does not have findings of fact. I assume that since the Third Circuit has already ruled on the substance and has found for itself the facts, according to the record—

THE COURT: Well, leave that with me. If I want anything else, I'll let you know. I know both of us are heading into a new adventure on Monday.

MR. KAIRYS: Right. I was hoping you'd either sign it or not, to tell you the truth.

MR. HILL: Your Honor, I just had about two minutes to look at this Order, and this Order is not satisfactory the way it's drawn.

[104] THE COURT: I don't know if it's satisfactory to me because I haven't read it yet. I just received your brief this morning and I have not read that.

In other words, as we all know the status of the case, taking the jurisdictional question aside for a moment, what's different about this than when the Third Circuit upset my applecart?

MR. HILL: I think there are several immediate differences: One. It's a point I made to you in the letter that I directed to you several days ago, and that point involves initially the proposition that when the Third Circuit decided this case, it only did so upon an application for a preliminary injunction. And given that, I don't that that distinction binds you, and I'm really serious—

THE COURT: Yes, but why should I walk into another reversal? Because it's pretty obvious the way they feel; isn't it?

MR. HILL: Frankly, no. It isn't obvious the way they feel. It isn't obvious that you are walking into another [105] rebuttal—reversal and rebuttal.

First, as you know, the decision was two to one. Judge Rosen did not—although he concurred in the result reached by Judge Gibbons, he did not in any way, shape or form agree in the reasoning or in the findings and conclusions that Judge Gibbons made.

THE COURT: This was not heard, I take it?

MR. HILL: No, it was not. Because I don't even know because of the time elements involved whether that opinion was even circulated in the entire panel before it went out.

THE COURT: It was supposed to have been.

MR. HILL: Things happened very quickly in that Circuit opinion. Just knowing what the time elements were in terms of submitting a brief; and when we got that decision, in, terms of when all briefs were submitted, I just don't know. I just don't know.

What's different? Well, of course, [106] we have presented evidence today with respect to the additional military people that were involved. We have presented additional regulations demonstrating more conclusively than before the control situation at Fort Dix in terms of the actual control by the military. We put more evidence on indicating the visual control, that is, the pictures. We've given you more evidence today on the distribution and approval requirements with respect to literature, and that alludes to a whole other point, really.

You were not reversed by the Court of Appeals with respect to your decision in so far as it relates to the pamphleteers. They indicated in their opinion that it was within your discretion at that point in time to deny them preliminary relief. So I'm not altogether sure that there is anything in the merits of the Third Circuit decision that goes to the pamphleteers.

THE COURT: How soon can you get me findings of facts and conclusions?

MR. HILL: That would depend on the [107] transcript. I would like to have those things related to the transcript.

THE COURT: Miss Attardi is going to Camden with us on Monday. I don't know. It will be up to her. Although you recall Judge Gibbons' opinion saying I should put it down quickly.

MR. HILL: Which you have done. There has been no pre-trial in this case.

THE COURT: If we're down there six or seven weeks, and this, you know, I propose to work on it, still we don't have a transcript. Can you do it from your notes, proposed findings?

MR. HILL: It's possible, although Miss Attardi advised me that she was not going to prepare this transcript herself, in any event.

THE COURT: She has to dictate it.

MR. HILL: She adviesd me—

THE COURT: She has to dicate it into a machine.

MR. HILL: She told me she would have someone else dictate it from her notes.

THE COURT: Can you do that?

[108] (Discussion off the record.)

THE COURT: All right, fine. Unless Mr. Kairys' company keeps me exhausted down there, I can work nights on this thing.

MR. KAIRYS: You know, we both do have the Camden 28 case, but I certainly wouldn't want that to interfere.

THE COURT: It won't, as far as I am concerned.

MR. KAIRYS: But I think, if we look back to exactly what the Third Circuit said, they did ask you to make a prompt decision on the jurisdiction question. That's all that is open. They said it should be promptly set down, and we should present the evidence you heard today to see if the pamphleteers meet the jurisdictional requirements and to hear evidence on the candidates, although they virtually said that was sufficient.

THE COURT: So you might know how I'm thinking, I don't know whether to resist the temptation to decide whether or not without proof of damages the First Amendment [109] right doesn't fall within the jurisdiction of the statute. I'm just wondering whether I should get into that.

MR. KAIRYS: I think that's a reasonable view. Certainly, the Third Circuit has eliminated the possibility, the main argument that the Government made. They said they will not follow the argument of the Justice Stone in the Hague v. C.I.O. case.

THE COURT: They indicated that.

MR. KAIRYS: So they asked you to make a determination of whether there is ten thousand. Given that, it's hardly appropriate to say there is less than ten thousand. That I don't think would have justification. And I think the appropriate conclusion would be

either to set a figure from the concrete figures, or to say—to find that it is at least ten thousand. And we have given you, in our memorandum, a lot of authority including Third Circuit that has that kind of thinking.

THE COURT: Did you know what he said there? He said they wouldn't—at that time, they do not feel that—I forget the [110] Judge's name up in New York.

MR. KAIRYS: Judge Weinstein.

THE COURT: —Weinstein, whether his view was unreasonable.

MR. KAIRYS: That's right. But they indicated they were open to that. He taught me civil procedure, by the way. So I like his opinions. But I think, first of all, about what Judge Rosen said, Judge Rosen said he made the main fact finding and joined with Judge Gibbons in that. He said that for the purposes of the Flower decision, this is an open military base.

THE COURT: He thought the Flower decision applied to this Base.

MR. KAIRYS: To this Base, right. So I don't see that we need facts or findings on the substance of issues. If it does, the pamphleteers are on a better decision actually than the candidates. In a sense, they are exactly doing what Flower did. The Third Circuit has already decided that the candidate plaintiffs had a right to campaign there. That's based on Flower. Flower was just the pamphleteer.

[111] Now, certainly the pamphleteer plaintiffs have the same right since the Court has held Flower applies. They had the exact same right that Flower has, which is just hand out leaflets. So it seems to me the substance has completely resolved. The Third Circuit has resolved it. And they asked you to promptly decide jurisdiction, and I think that's really the only finding that's necessary at this point. That's why the Order I've offered you has a permanent injunction, that the first paragraph of it is a finding on jurisdiction.

THE COURT: I hesitate to do it right now without reading over his brief.

MR. KAIRYS: Fine.

THE COURT: And I just got it this morning.

MR. HILL: What was that?

THE COURT: I just got your brief this morning. I said I haven't read it yet.

MR. HILL: Right. If you're inclined simply to read the brief that has been submitted and review the other briefs that [112] have been submitted, then decide, you know, whether or not you want to sign that Order, the Order that has been submitted, without more, if that's your inclination, then there are a couple of points I'd like to make.

THE COURT: No. I am going to wait until you submit your findings of fact, presuming that you can get it done quickly.

MR. HILL: Well, I can get it quickly depending—I would like a transcript though, in that kind of case, since it's obviously going to be reappealed.

MR. KAIRYS: I don't understand why you need this transcript. The whole substance is in on the other transcript.

THE COURT: It's obvious what the defendants are thinking about—unless I miss my guess—that the factual situation here is almost perfect to ask the Supreme Court to get any action. Because there are only five to four on that preliminary hearing. And actually, that's why he wants me to make complete findings all over again.

[113] MR. HILL: I think you would be in trouble if you didn't, frankly.

MR. KAIRYS: Now, given the Third Circuit has already reviewed this, your Honor, the Supreme Court has plenty to review. I don't understand that it would make any difference at this point.

THE COURT: The only thing I'm trying to do is speed him up a little. I'm willing to take it from him, look them over. How fast can you do it after she gets the transcript to you; a couple of days?

MR. HILL: If I get a transcript from her? I would think I could get something to you in, well—I'd like two weeks to get something to you from the time I get the transcript.

MR. KAIRYS: I don't understand why he needs the transcript of today, your Honor. There is nothing in there except what he presented himself. I don't think there is any difference at all. We perhaps introduced more—

THE COURT: I don't see anything to change the factual picture unless to bolster [114] with some photographs.

MR. KAIRYS: Well, he knows what photographs were introduced and he has the whole transcript.

MR. HILL: It is also the jurisdictional question. Mr. Kairys feels that the Third Circuit remanded the matter for you to rubber stamp on the jurisdiction question. I just don't think that's that clear.

MR. KAIRYS: I never said that.

MR. HILL: Yes, you did.

THE COURT: Let's not get into it. That's the reason for speed.

MR. KAIRYS: Yes. I would like to see the mandate of the Third Circuit followed, and I would like us to get a permanent injunction in this case and have it resolved. I'll just reiterate, I'm sure, what your Honor knows. The finding of this case was not subject to Flower, it was ruled clearly erroneous.

THE COURT: That's what he said.

MR. KAIRYS: It was ruled by two out of three.

THE COURT: I don't necessarily have [115] to agree with him.

MR. KAIRYS: Well, that's what the ruling was, your Honor.

THE COURT: No question about it.

MR. KAIRYS: And the facts are not different. So I don't see where you are making findings—we would offer as our proposed findings the opinion of the Third Circuit.

THE COURT: All right. Well, you get them to me as quickly as possible and get them to me down in Camden. My secretary will be here most of the time, and she is coming down, I think, once a week so she can bring them.

MR. HILL: We don't want to delay the imposition of evidence or that you seem to feel that you—

THE COURT: Well, my feeling is I don't have much choice about it. If you want facts to be found by me, again, for the purposes of review, all right. Now, I can make a determination and then find the facts later, just make a decision, reserve the right to file an opinion. But I'll see how [116] fast you move. If you don't, I'll do it that way. All right.

MR. HILL: Okay, Judge. Thank you.

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SUPREME COURT OF THE UNITED STATES

No. 74-848

BERT A. DAVID, Commander, Fort Dix Military Reservation, et al., PETITIONERS

v.

BENJAMIN SPOCK, et al.

ORDER ALLOWING CERTIORARI. Filed April 14, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.